



Observatoire ARGA

INTERNATIONAL ANALYTICAL REPORT

D-22. Cross-Border Insolvency

COMI, Forum Selection and Recognition

Insolvency, Corporate Disputes and Criminal Measures

Author:

Sergey Khrabrykh - President of ARGA, PhD

Organization: Observatoire ARGA

Correspondence: 21 rue de l'Aviation, 64600 Anglet, France

Contact: info@argaobservatory.org, +33 7 58 49 62 27

Website: www.argaobservatory.org

28 September 2026

Contents

Executive summary	3
1. Research question and scope	3
2. Four outcomes within a cross-border case	4
3. COMI and administration ascertainable by third parties	5
4. Building the COMI evidence package	6
5. Forum selection and changes in COMI	7
6. European recognition and its limits	8
7. Secondary proceedings and local creditors	9
8. The UNCITRAL Model Law and national implementation	9
9. United States: recognition and targeted Chapter 15 relief	10
10. England and Wales after Brexit	11
11. France: recognition, exequatur and domestic consequences	12
12. Judgments against third parties: Rubin	13
13. Real estate and the limits of universal administration	14
14. Criminal seizure and insolvency proceedings	15
15. Corporate disputes, representation and ownership of claims	16
16. Records, banking information and the limits of assistance	17
17. Creditor claims and multiple recoveries	18
18. Corporate groups and coordination protocols	18
19. Applicable law and pending litigation	19
20. Practical scenarios: COMI, recognition and real estate	20
21. Practical scenarios: seizure, records and distributions	22
22. Economics and sequencing of the international strategy	23
23. Recommendations and conclusions	24
Sources and references	26

Source cut-off: 28 September 2026. Keywords: cross-border insolvency; COMI; recognition; forum shopping; criminal seizure; creditors.

Executive summary

Cross-border insolvency exposes a mismatch between the economic integration of a business and the territorial limits of judicial authority. A company may be managed in one country, own real estate in another, borrow under the law of a third and keep its records with a foreign service provider. Opening insolvency proceedings does not remove these distinctions. Each subsequent step requires an answer to three questions: which court has jurisdiction, which law governs the issue and what order can actually be implemented where the asset or the person required to act is located.

This report addresses the determination of the debtor's centre of main interests, recognition of foreign proceedings and the interaction between insolvency, corporate disputes and criminal measures. It compares the European framework with the mechanisms available in England and Wales, Chapter 15 of the United States Bankruptcy Code and the French approach. The UNCITRAL Model Law is treated as a model for national legislation, not as a treaty operating directly in every country.

The central finding is that four outcomes must remain distinct: recognition of the proceeding and its representative; the grant of particular assistance; recognition of a judgment against a separate defendant; and recovery and distribution of property. Success at one stage does not establish entitlement at the next. The distinction is particularly important for real estate, avoidance claims, access to records and assets subject to criminal seizure.

A workable strategy relies on evidence that was objectively available to creditors before the dispute, an assessment of each group company and a coordinated record of existing judicial restrictions. A director's relocation, a new registered address or a bank account does not replace an examination of actual administration. Equally, choosing a more suitable restructuring procedure does not by itself establish abuse. The relevant questions concern genuine changes, transparency to creditors and the legal consequences of the chosen route.

Eight judicial decisions and six hypothetical scenarios illustrate these issues. The report proposes practical approaches to assembling evidence, coordinating officeholders, protecting local creditors and assessing the economic justification for foreign proceedings. Performance should be measured by value preserved and lawfully distributed, rather than by the number of recognition orders obtained.

1. Research question and scope

The research question is how to preserve the collective function of insolvency without treating a foreign proceeding as an unlimited source of authority over property and participants in another country. The analysis follows the grounds of international jurisdiction, evidence of the centre of main interests, the consequences of recognition, separate proprietary and liability claims, and interaction with public restrictions. These questions are connected, but they cannot be resolved through a single assessment of the debtor's good faith.

Insolvency is used comparatively to include reorganisation and liquidation procedures covered by the relevant framework. This does not mean that every private arrangement with creditors qualifies as a foreign proceeding eligible for recognition. Each mechanism requires attention to the definition of a proceeding, supervision by a court or other competent authority, its collective nature and

applicable exclusions. Under the European framework, inclusion in the relevant annex to the Regulation is also significant. [1, 2]

The legal cut-off is 28 September 2026. Legislation and published judicial decisions take priority over commentary. Decisions under the former Regulation No 1346/2000 explain the development of COMI; they are not used to disregard changes made by Regulation 2015/848. English common law assistance is distinguished from statutory powers. French exequatur is not presented as a local version of Chapter 15.

The cases have been selected for particular legal propositions. They are not a statistical sample and do not support numerical estimates of success. The practical scenarios are hypothetical and show which facts can change the procedural route. Recommendations are the analysis of Observatoire ARGA and are not attributed to the courts or international institutions discussed.

The comparison focuses on ordinary corporate and personal proceedings where they fall within the rules under examination. Banks, insurers and other regulated entities may be subject to special resolution or insolvency regimes. Similar economic consequences do not justify extending ordinary commercial insolvency rules to those entities without a separate classification exercise.

The intended reader is a practitioner or institutional participant who must organise a case across jurisdictions. The report therefore links legal distinctions to evidence, instructions and implementation. It does not attempt to provide a complete national insolvency manual for each jurisdiction. The useful comparison is between functions and legal gateways, with the domestic conditions of each gateway kept visible.

2. Four outcomes within a cross-border case

The working model distinguishes status, power, claim and enforcement. A foreign officeholder may be the proper representative of the debtor without having authority to sell foreign land. A court may permit access to bank records without accepting the merits of a future recovery claim. A recognised money judgment may remain unpaid because there are no available assets. Each proposition requires its own legal and factual foundation.

Task	What must be established	Practical outcome
Recognition of proceedings	Applicable framework, qualifying proceeding and representative, required connection	Access to the consequences attached to recognition
Judicial assistance	A specific power, necessity of the measure and protection of affected persons	Preservation, information or another defined order
Claim against a third party	Cause of action, jurisdiction, applicable law and procedural protection	Adjudication of a separate claim
Realisation and distribution	Entitlement, removal of obstacles, priorities and payment rules	Value available to the relevant creditors

This model produces more useful instructions to local counsel. Instead of asking only whether a foreign insolvency will be recognised, the instructing team should identify the proposed sale to be stopped, the records needed for a particular period and the payment to be recovered from a named recipient. Different answers may depend on different proceedings. A general explanation of international cooperation does not establish that each requested order is available or enforceable.

The initial asset map should record the legal owner, actual custodian, location or system of registration, existing encumbrances, source of the information and estimated value. For a receivable, the obligor and the character of the obligation matter. For shares, the issuer and custody or registration arrangements may be critical. For real estate, the land register and the precise interest require attention. A group presentation prepared for investors is not a substitute for this legal map.

An asset must also be distinguished from evidence suggesting that it exists. A bank statement proves particular entries, but it does not by itself show that the entire balance belongs beneficially to the estate. A management agreement may explain access to an account without conferring ownership. An internal ledger may record an intercompany receivable that the alleged debtor disputes. Treating each item as immediately recoverable property inflates expected returns and encourages excessive applications.

The practical benefit of separating the stages is that a setback can be located accurately. Refusal of an immediate transfer need not defeat preservation. Recognition may still be worthwhile even where a particular judgment cannot be enforced through that route. Conversely, an available domestic claim may make a separate recognition exercise unnecessary for the immediate objective. The correct sequence follows the proposed relief and the legal basis supporting it.

3. COMI and administration ascertainable by third parties

The centre of main interests, or COMI, is the principal connecting factor for main proceedings under the European system. Article 3 of Regulation 2015/848 connects COMI to the place where the debtor regularly administers its interests in a manner ascertainable by third parties. The presumptions concerning a registered office, an independent business or professional activity, and the habitual residence of other individuals address different factual situations. [1]

COMI is not a search for the country containing the most valuable property or the citizenship of the ultimate owner. The inquiry concerns the particular debtor. Where an operating company contracts, takes management decisions and deals with creditors in one location, its beneficial owner's residence abroad does not necessarily shift the company's centre of interests. Conversely, an individual's affairs cannot sensibly be analysed only through a corporate checklist of board meetings and registered offices.

In Eurofood IFSC, C-341/04, decided on 2 May 2006, the Court of Justice emphasised the separate assessment of a subsidiary. A parent's ability to control its economic choices did not alone rebut the registered-office presumption where the subsidiary conducted its business in that state. Rebuttal required objective circumstances ascertainable by third parties. Although the case concerned the former Regulation, it remains a significant warning against automatically locating every group company's COMI at the group's headquarters. [3]

Interdil, C-396/09, decided on 20 October 2011, developed the importance of central administration and an overall assessment of relevant circumstances. Property and contractual relationships in another state do not replace identification of the actual centre of administration. The concept of an establishment also requires more than the mere presence of property. The decision does not prescribe a mechanical scoring system in which two factors always outweigh one. [4]

For evidence preparation, the question is what a document proves about the administration of this debtor. A board minute is useful because it reflects a genuine decision-making process, not merely because a foreign city appears in its heading. Correspondence with a lender matters because it identifies who negotiated, approved or implemented decisions and what the lender could reasonably ascertain. Each document should be linked to a function and a period.

The assessment should also distinguish influence from administration. A shareholder may set commercial objectives while local directors manage the debtor's finances and creditor relationships. Alternatively, apparent local directors may perform only formal signing functions while all meaningful administration occurs elsewhere. Either conclusion needs evidence. Corporate charts and titles identify participants, but they do not establish how the debtor's affairs actually operated.

4. Building the COMI evidence package

A persuasive package can be organised around management, external relationships, operational infrastructure and chronology. Management evidence concerns signing authority, budgets, borrowing decisions and liquidity control. External relationships identify where creditors sent demands and who negotiated payment arrangements. Infrastructure includes personnel, premises, accounting systems and the maintenance of records. Chronology separates an established arrangement from changes made shortly before an application.

Documents do not all carry the same evidential weight. A bank notification of a new address is an external record, but it does not establish that all administration moved. An office lease may never have been implemented. A national internet domain says little about where decisions were made. Consistent records from independent creditors, actual employment arrangements and repeated payment instructions can corroborate one another. The aim is to explain a functioning system, not to produce the largest possible set of exhibits.

The date of creation matters. A statement prepared after litigation begins may accurately describe earlier events, but it should be tested against contemporaneous records. Original emails, versions of minutes, signing information and explanations from actual decision-makers should be preserved. A lawyer's later classification of events should not be presented as the creditor's understanding at the time those events occurred.

Where management was distributed, a functional table is more useful than a claim that everything happened at one address. It should identify who approved major transactions, negotiated finance, operated bank accounts and answered claims. Adverse facts belong in that table. If directors worked across several countries, suppressing that complexity may damage credibility more than an open explanation of the allocation of functions.

Particular care is needed where the proposed COMI account differs from statements in tax, sanctions or criminal proceedings. The legal tests are different, so a different legal conclusion is not

necessarily inconsistent. The underlying facts should nevertheless be reconcilable. The location of a director, the authority of a signatory or the work done by an employee should not change according to the desired result. A review of earlier submissions can identify genuine distinctions and facts that require correction or explanation.

The final evidence schedule should allow the judge to move from a proposition to a document without reconstructing the business independently. For example, a proposition about payment approval should identify the relevant instruction, approver and date. A proposition about creditor expectations should identify an external communication. A proposition about a relocation should identify both the old and new arrangement. This structure makes weaknesses visible early and allows the team to decide whether further evidence is realistically available.

5. Forum selection and changes in COMI

Forum shopping describes materially different conduct. It can mean choosing between genuinely available procedures, reorganising a business to support an effective rescue, or manufacturing a connection with a preferred court. These situations should not be collapsed into one accusation. The legal basis of jurisdiction, the truth of the facts presented and the transparency of changes to creditors are central. A more favourable procedure does not itself prove that a relocation was fictitious.

The European Regulation restricts reliance on presumptions following recent moves. The relevant period is three months for a company's registered office or an independent business or professional activity, and six months for the habitual residence of other individuals. These provisions do not impose a universal prohibition on filing within that period. Nor do they automatically establish jurisdiction in the former state. COMI must be established without the unavailable presumption. [1]

In *Galapagos BidCo.*, C-723/20, decided on 24 March 2022, the Court of Justice confirmed that a Member State court properly seised of a request for main proceedings retains exclusive jurisdiction where COMI moves to another Member State before the opening decision. The judgment separately addressed the end of the Brexit transition: an unresolved UK request did not retain the same blocking effect under the Regulation after the relevant regime ceased to apply. The decision is not a worldwide first-to-file rule. [5]

The chronology should therefore identify the filing date and, where material, the time; the relief requested; the status of the application; and the timing of actual business changes. A withdrawn request, an application to an incompetent body and an application concerning a different procedure cannot simply be treated as equivalent events. Parallel teams should coordinate factual disclosure before asking courts to make potentially incompatible decisions.

A useful internal question is whether the relocation would have made commercial sense without the desired insolvency outcome. That question does not decide jurisdiction, but it helps test the evidence. Actual employees, liquidity management, coherent creditor communications and continuing functions are more persuasive than a new postal address. Even a commercially sensible move remains subject to the rules governing the relevant date and creditor protection.

The alternative position should be developed at the same time as the preferred one. If a court rejects the proposed COMI, what procedure remains available, and what urgent relief might preserve the

business meanwhile? An unsupported filing can consume the remaining cash while leaving assets exposed. The decision to proceed should therefore combine jurisdictional analysis with an operational contingency plan, rather than assuming that a favourable restructuring rationale will cure weaknesses in the connecting facts.

6. European recognition and its limits

Regulation 2015/848 facilitates recognition of an opening judgment within its scope in other participating Member States. This differs from the application-based recognition architecture of the Model Law. Automatic recognition does not remove the need to identify the applicable framework, the subject of the judgment and the limits of the officeholder's powers. Denmark does not participate in the Regulation. Older UK proceedings require a separate temporal analysis. [1, 20]

Three documents are particularly important in practice: the opening judgment, evidence of the officeholder's appointment and an exact description of the proposed act. A foreign bank cannot use a broad reference to European law to resolve uncertainty about which debtor is covered or who may issue instructions. A matching trading name does not remove the need to check the registration number and legal entity.

The officeholder does not acquire a general power to take coercive action abroad without the required judicial process. Dealings with a registry, bank, custodian or court remain subject to the allocation of authority under the Regulation and relevant local rules. Voluntary provision of information must be distinguished from compulsory production. Notice of an insolvency is different from alteration of a registered proprietary right. Preservation of an asset is different from permission to sell it.

Public policy remains an exceptional ground within the Regulation's prescribed limits. Disagreement with a proposed distribution or an unfamiliar feature of foreign law should not automatically be described as a violation of fundamental guarantees. A substantial objection identifies a concrete defect, such as a real inability to participate or a serious failure of procedural protection. The argument must connect that defect to the result sought in the receiving state. [1]

Operationally, recognition must reach the person who actually controls the asset or record. An opening judgment may not alter online banking permissions or a register entry without proper communication and documentation. It is useful to establish the required documents, language and submission channel in advance. This is an implementation issue, not an opportunity for an institution to invent a new recognition test. The legal basis of disproportionate requirements can itself be challenged.

The team should keep proof of delivery and any response. If a bank accepts the appointment but refuses a particular transfer, the dispute has moved from status to the proposed transaction. If a registry asks for a specific local form, the question is whether that form implements an existing entitlement or imposes an unjustified substantive condition. Correctly identifying the remaining obstacle avoids repeating the entire recognition argument to the wrong decision-maker.

7. Secondary proceedings and local creditors

Secondary proceedings are not a remedy for an incorrectly opened main insolvency. They form a distinct statutory mechanism associated with an establishment in another territory and a limited asset reach. They may protect local participation and interests, but they can also increase costs, add officeholders and create conflicting realisation strategies. Their practical value depends on the assets, creditors and available coordination arrangements. [1]

A staffed branch carrying on operations should be distinguished from a warehouse serviced by an independent contractor or a single bank account. Commercial labels do not establish an establishment for insolvency purposes. The evidence should concern the debtor's own activity, its continuity and organisational substance. Valuable property creates an economic reason to seek local control, but does not automatically create jurisdiction to open the relevant proceedings.

Article 36 of the Regulation provides for an undertaking intended to protect local creditors and avoid secondary proceedings where its conditions are met. It is a defined legal mechanism, not a general promise that everyone will receive the same amount. Its operation depends on matters including the assets covered, distribution rules, approval and the means of securing compliance. [1]

A creditor should compare two financial outcomes. The first is the likely distribution in a separate local proceeding after its costs. The second is the expected distribution under the proposed coordination arrangement. Timing, disputed security, storage costs and access to information belong in the comparison. A higher nominal promise may be less valuable if payment depends on lengthy foreign litigation with an uncertain outcome.

The arrangement should also address changes in circumstances. These may include a fall in asset value, discovery of another security interest, replacement of the officeholder or a dispute about the local claim. Reporting should be sufficient to show performance of the undertaking without creating a duplicate administration of the whole insolvency. Trust is supported by verifiable procedures and financial information, rather than an abstract appeal to universal administration.

Local creditors should identify the protection they actually need. It may be a reserve for a disputed priority, notice before a sale or an opportunity to challenge allocation of proceeds. Demanding a full secondary proceeding may be disproportionate where those concerns can lawfully be addressed by a narrower mechanism. Conversely, a coordination proposal should not be accepted merely because it is cheaper if it leaves a material local entitlement without an effective means of protection.

8. The UNCITRAL Model Law and national implementation

The 1997 UNCITRAL Model Law on Cross-Border Insolvency offers states an architecture of access, recognition, relief and coordination. It does not operate directly as a treaty binding every country. National legislation may adapt its terms, and the receiving court applies the enacted rules. A statement that a country has adopted the Model Law is therefore a starting point for research, not a complete account of the consequences of a foreign insolvency. [2]

The model distinguishes a foreign main proceeding associated with COMI from a foreign non-main proceeding associated with an establishment. Recognition has both documentary and substantive requirements. A court order proves that a decision was made; it does not dispense with examination

of the proceeding's character or the representative's authority. A foreign procedural label may not correspond exactly to the concept used by the receiving legislation.

An application can be structured around a series of concrete questions. Who is the debtor? What collective proceeding exists? Who supervises it? Who has been appointed to represent it? What connection exists with the opening state? What other proceedings are known? An explanation of foreign law should answer these questions directly. An extensive translated statute without an explanation of the officeholder's actual powers is usually less helpful than a focused, documented analysis.

The application should separate consequences attached by law to recognition from relief requiring a further exercise of discretion. Recognition of authority to act for an estate does not necessarily permit immediate transfer of every local asset for distribution abroad. Preservation, administration and final distribution differ in reversibility and in their effect on third parties. They require corresponding attention to protection and notice.

The international model helps frame the inquiry but does not remove national procedural conditions. Notice, evidence, translation, urgent hearings and appeal mechanisms must be checked for the particular application. Recording those differences in the common case plan prevents the same legal request from being circulated unchanged across countries. Facts can be reused efficiently; legal conclusions cannot simply be copied between enacted versions.

The status of the foreign proceeding must remain current. Appointment orders may be amended, representatives replaced and proceedings converted or closed. A package that was accurate when assembled may no longer support the requested act. A practical system assigns responsibility for notifying the receiving team of changes, rather than assuming that the foreign court's public register will be monitored continuously by everyone involved.

9. United States: recognition and targeted Chapter 15 relief

Chapter 15 provides a specific application route for a foreign representative. Section 1515 addresses evidence of the proceeding and appointment, disclosure of known foreign proceedings and English translations of the required documents. Section 1517 governs recognition and classification as main or non-main. Applicable debtor eligibility requirements and the proper court must also be considered; foreign incorporation alone does not answer them. [7, 8]

Where urgent protection is needed, section 1519 permits provisional relief before recognition is decided. Once a foreign main proceeding is recognised, section 1520 attaches specified effects with the debtor and territorial scope stated in the legislation. Additional relief under section 1521 and protection under section 1522 require separate analysis. Main and non-main recognition cannot be described as interchangeable labels producing the same automatic stay. [9-12]

The evidence should identify the United States objective. It should explain which account requires protection, which records are held by the respondent, why loss is threatened and what the court is asked to permit or prohibit. A request for any assistance the representative considers necessary does not explain proportionality. A defined period, identified accounts, a method of production and a procedure for objections make the request more usable and defensible.

Transfer for distribution calls for particular attention to local creditors. The court can be assisted by an explanation of notice, access to the claims process, relevant priorities and proposed reserves. This does not require the foreign system to reproduce United States law in every respect. It does require a reasoned basis for an irreversible transfer, rather than assuming that the justification for preserving funds also justifies sending them abroad.

Avoidance claims require a separate analysis of standing and substantive authority. Section 1523 refers to the foreign representative's standing to bring specified claims in a case under another chapter of the Bankruptcy Code. It should not be read as automatically granting the full range of federal avoidance powers solely because Chapter 15 recognition has been obtained. Other possible claims, including claims under foreign law, need their own legal route. [13]

The order must also fit the actual custody arrangement. An account with an international banking group is not necessarily an account held by the relevant United States entity. The contract, custodian, account location and character of the debtor's right require attention. A client's financial terminology is useful background, but it should not determine the legal description in the proposed order.

A practical application plan should anticipate the recognition hearing and what comes immediately after it. If provisional relief must continue, that should be addressed expressly. If information obtained after recognition may change the request for transfer, the proposed timetable can allow that review. Treating recognition as a beginning for local administration, rather than as the final recovery event, improves both drafting and budgeting.

10. England and Wales after Brexit

The former automatic European framework is not the general route for new UK-EU cases. Insolvency Service guidance explains the change for main proceedings opened after the transition period ended on 31 December 2020. Incoming foreign proceedings may seek recognition under the Cross-Border Insolvency Regulations 2006. An English officeholder seeking assistance in an EU state must examine that state's applicable rules. The two directions are not necessarily symmetrical. [6, 20]

The 2006 Regulations apply within their stated territorial scope in Great Britain; Northern Ireland has separate legislation. The practical discussion of English decisions in this report primarily concerns England and Wales. Common law recognition, the CBIR and other statutory cooperation mechanisms should be identified separately because their gateways and available powers are not identical.

The route should be selected before the requested relief is drafted. If the requirements for CBIR recognition are absent, common law recognition will not necessarily supply the missing powers. Equally, a limitation in a common law case cannot automatically be extended to assistance expressly authorised by statute. The distinction is particularly important for English real estate and compulsory orders against third parties.

The effect of a foreign restructuring on an English-law debt is a separate issue. Recognition, a temporary restraint on enforcement and final discharge of an obligation must be examined independently. The rule in *Gibbs* and the consequences of a creditor's participation require attention.

Temporary procedural protection should not be assumed to achieve a permanent substantive compromise. The Government's work on further Model Law implementation illustrates the sensitivity of these questions; a stated intention to reform is not itself an operative rule. [21]

Instructions should identify the governing law of the debt, any jurisdiction agreement, the creditor's conduct in the foreign proceeding and the intended duration of protection. They should also compare recognition with an available domestic procedure where its requirements can be met. The convenience of one application should not obscure that it may fail to deliver the final result for which the estate is paying.

The same discipline applies to outgoing English proceedings. A domestic order may have extensive intended reach, but its practical effect elsewhere depends on the receiving system. Local advice should be obtained before committing to a sale or restructuring step that assumes foreign acceptance. Where cooperation is possible but uncertain, the transaction can be structured around appropriate conditions rather than presenting recognition as a completed fact.

11. France: recognition, exequatur and domestic consequences

The first distinction in France is between a judgment within the European Regulation and one requiring another mechanism. Automatic European recognition and exequatur should not be combined into a universal requirement for every foreign insolvency act. For a judgment outside that regime, the applicable treaty, French recognition rules and the particular effect requested must be identified.

Cornelissen, First Civil Chamber of the Cour de cassation, 20 February 2007, no 05-14.082, states the general approach to exequatur outside an international convention: indirect jurisdiction founded on a connection with the foreign court, consistency with substantive and procedural international public policy, and absence of fraud. The French court need not recheck whether the foreign court applied the law selected by the French choice-of-law rule. The decision concerns foreign judgments generally; it does not resolve every special insolvency question. [17]

The practical implication is to prepare evidence of the international regularity of the process. Jurisdiction, service, the opportunity to defend, the status of the judgment and the identity of the parties matter. Where the applicant seeks action against property, the request should explain precisely which measure needs enforceable effect in France. Recognition that a foreign proceeding exists is not the same as enforcement of a specific command.

For French domestic proceedings, Article L. 622-21 of the Commercial Code regulates the interruption or prohibition of specified individual creditor actions and enforcement, subject to its limits. Article L. 641-9 addresses the debtor's loss of power to administer and dispose of the relevant property in liquidation and the liquidator's exercise of proprietary rights and actions. It also preserves certain actions for the debtor, including the specifically stated ability to participate as a civil party to establish the guilt of a person who caused criminal harm. [18, 19]

A former director's power of attorney therefore does not automatically establish authority to instruct a proprietary claim. The opening date, type of proceeding, continuing corporate powers and the appointed officeholder's functions must be examined. A short explanation connecting the documents

to the particular proposed signature can assist a bank or notary. Translating an officeholder's title without explaining the function may create a misleading impression of authority.

A local implementation plan should also distinguish the documents needed by the court from those needed to complete the transaction. An exequatur order may resolve one legal obstacle while a notary still needs current title information or evidence of the signatory's identity. Conversely, a bank's acceptance of a representative for correspondence does not prove that it accepts authority to dispose of a disputed balance. Recording each acceptance and outstanding condition prevents informal communications from being mistaken for substantive legal clearance.

12. Judgments against third parties: Rubin

In *Rubin v Eurofinance* and the associated *New Cap Reinsurance v Grant* appeal, [2012] UKSC 46, decided on 24 October 2012, the Supreme Court distinguished assistance to an insolvency from enforcement of avoidance judgments against particular defendants. In *Rubin*, the majority declined to create special enforcement rules merely because the claim arose in insolvency. *New Cap* had a different result: the creditor's participation by proving in the foreign insolvency was material to submission to that jurisdiction. [14]

The decision explains why saying that a judgment was delivered in the main insolvency does not complete the analysis. The claimant must identify jurisdiction over the particular defendant and the relevant enforcement route. The defendant must consider the consequences of its own participation. Seeking a benefit through the foreign claims process can affect a later attempt to deny the binding force of related decisions.

The practical inquiry should take place before the foreign claim is issued. Where are the defendant's assets? Will the proposed judgment be enforceable there? How must service be effected? Would it be more efficient to bring the substantive claim directly in the enforcement forum? An estate may otherwise obtain a substantial paper judgment and then face a new or significantly more difficult process abroad.

Within the European system, a specific framework exists for certain judgments deriving directly from insolvency and closely connected with it. That framework cannot be replaced by English common law principles. Nor can it be extended to every corporate claim involving an insolvent party. Classification depends on the basis of the claim and the applicable instrument, not simply on the fact that an officeholder is the claimant. [1]

A short schedule for each potential defendant should state the cause of action, jurisdictional connection, service method, procedural protections, recognition route and known assets. Evidence and enforcement need to be analysed together. If the defendant lacks assets, litigation may still have a justified purpose, such as obtaining information through an available procedure or preserving an insurance-related recovery. That purpose should be identified and valued separately rather than concealed within a nominal damages figure.

Settlement planning belongs in the same schedule. An offer from a third party may depend on releases by more than one estate or on approval from a foreign court. The officeholder must establish who owns the claim, who can compromise it and what happens to the proceeds. Recognition of a representative is not a substitute for those substantive and procedural approvals.

The enforceability of the settlement itself should be considered before the estate gives up its underlying rights.

13. Real estate and the limits of universal administration

Kireeva v Bedzhamov, [2024] UKSC 39, decided on 20 November 2024, concerned a trustee in Russian bankruptcy claiming English immovable property through common law recognition. The Supreme Court confirmed that the immovables rule prevented that recognition from giving the foreign trustee an interest in or right to the English property. The statutory assistance mechanisms did not apply in that case. The decision is not a general prohibition on every foreign officeholder obtaining assistance concerning all English assets. [16]

The limits of the route actually used are essential. A recognised appointment, a foreign duty to gather worldwide property and creditors' economic interests do not replace a legal entitlement accepted at the situs of land. The Court also rejected the proposed route through a later sale and treatment of the proceeds as movable property. Legal classification and the relevant sequence of events could not be bypassed by describing the intended cash outcome.

The practical review of real estate starts with a current register entry, the form of title, lease duration, mortgages, restrictions on disposition and rights of any co-owner. The market value of the physical property differs from the value of the debtor's interest. A leasehold interest subject to development obligations may require a very different assessment from unencumbered ownership of completed premises.

Where a subsidiary owns the land, insolvency of its shareholder does not turn the building into the shareholder's property. The estate may contain shares, an intercompany receivable or another distinct right. The ability to influence a disposal through corporate powers also requires examination. A share sale and a property sale involve different registration, creditor and tax consequences. Their expected proceeds should not be treated as interchangeable.

The analytical recommendation is to establish the local property route before committing to international proceedings. The principal obstacle may be lack of title, a security interest or a restriction on disposal rather than recognition of insolvency. Removing one obstacle does not remove the others. The team should understand their sequence and avoid promising distribution before all material conditions have been resolved.

Valuation should reflect these legal constraints. A report describing vacant possession or an unrestricted sale may be unsuitable if the debtor owns only a limited interest. The valuer should receive the relevant title information and assumptions. The legal team should then check whether the proposed transaction can deliver those assumptions. This exchange prevents an apparently attractive recovery strategy from being built on a valuation of property the estate cannot actually sell.

14. Criminal seizure and insolvency proceedings

Collective debt enforcement and criminal measures have different functions. Insolvency organises the debtor's liabilities and property, while criminal seizure may preserve assets for confiscation or another statutory purpose. Equal treatment of creditors does not automatically terminate a criminal restriction. Equally, the existence of seizure does not itself finally establish that the property represents criminal proceeds.

In the United States, section 362(b)(1) excludes criminal proceedings from the automatic stay. Section 362(b)(4) addresses police and regulatory powers, distinguishing enforcement of a money judgment. Sections 1519(d) and 1521(d) additionally restrict the use of Chapter 15 assistance to enjoin the relevant governmental action. Not every attempt by a public authority to collect money necessarily falls within protected regulatory action: the particular measure must be classified. [9, 11, 22]

In France, Article 706-147 of the Code of Criminal Procedure provides for the application of the special seizure measures even after cessation of payments, notwithstanding Article L. 632-1 of the Commercial Code. This is a defined rule concerning those measures, not a complete priority code for every contest between the state and creditors. The rules governing implementation and challenges to seizure must also be considered. [23]

The Commercial Chamber of the Cour de cassation, on 15 November 2017, no 16-17.868, considered an attempted sale where liquidation preceded criminal seizure of real estate. It confirmed that the liquidator had to challenge the seizure before the competent criminal jurisdiction. The insolvency court could not determine the seizure's validity itself and permit sale of property rendered unavailable for disposition. The decision concerns authority and the operative restriction, not a universal rule that final confiscation always defeats every insolvency entitlement. [24]

A practical plan should contain two coordinated workstreams. The insolvency case establishes the officeholder's authority, the economic need for action and relevant creditor interests. The criminal case addresses the seizure's legal basis, the applicant's procedural standing, the appropriate remedy and time limit, and any available modification of custody or permitted realisation. The arguments should support one another. Seeking to preserve value need not involve prematurely accepting the alleged criminal origin of the asset.

A common register of restrictions is particularly important. Release of one seizure does not create freedom to sell where another injunction, mortgage or sanctions restriction remains. Before a transaction, the team should obtain written confirmation of the scope of each relevant permission and identify the destination of the proceeds. A purchaser should not be left to choose between inconsistent instructions from different representatives.

The same approach applies where an asset deteriorates during litigation. The officeholder should distinguish a request to preserve economic value from a request to determine ultimate entitlement. An independent valuation, evidence of maintenance costs and a proposal for controlled proceeds may support consideration of a lawful solution. They do not confer authority where the relevant statute withholds it. The requested order must come from the body competent to deal with the particular restriction.

15. Corporate disputes, representation and ownership of claims

Cross-border insolvency frequently overlaps with disputes over shares, appointment of directors or the validity of a power of attorney. Three levels must be separated: ownership of the equity interest, authority to represent the company and ownership of the substantive claim. Success in one corporate dispute does not necessarily restore powers restricted by an insolvency order.

The initial review should include incorporation and governance documents, the opening order, the officeholder's appointment, subsequent decisions and any limits on authority. Every procedural signature should have an identifiable legal basis. If a former director brings an application in the company's name while the officeholder refuses to support it, representation and any retained procedural rights must be resolved before assuming that the merits are properly before the court.

Corporate property should not be conflated with the beneficial owner's personal assets. A subsidiary's cash may have been economically accessible to the group, but that does not make it an unrestricted resource of the parent's estate. An intragroup transfer needs a legal basis, such as repayment, a distribution or payment for services. The absence of evidence supporting the basis may itself create a disputed claim.

Separate retainers may be necessary where interests conflict. Counsel for the group, a particular estate and a director facing criminal allegations may owe incompatible duties. A shared wish to preserve the business does not eliminate disagreement over repayment or management liability. Decisions about disclosure and funding of defence should reflect those different interests, rather than depending solely on trust among the individuals involved.

For each proposed claim, the team should identify the person who suffered the relevant injury and the nature of the loss. Depletion of company assets, a reduction in share value and infringement of a shareholder's personal rights are not one claim. Recovery by the subsidiary's officeholder does not establish a shareholder's immediate personal entitlement. Distribution follows the rights and priorities of the relevant estate, and restoration of group value may leave shareholders without a return where liabilities remain greater than assets.

A useful ownership chart shows three dates: before the disputed transaction, at commencement of insolvency and at the proposed recovery date. It can expose changes in control, share transfers, new security and a mismatch between the debtor and the asset owner. The chart should be grounded in registers and agreements. A presentation without title documents remains a hypothesis to be tested.

The chart also helps allocate questions to the right advisers. A dispute about appointment of a director may require corporate-law analysis, while entitlement to bring an estate claim depends on insolvency law and the particular appointment. The enforcement forum may then apply its own recognition rules. Treating all three as one corporate-control question can result in instructions being issued by the wrong person or claims being brought for the wrong claimant.

16. Records, banking information and the limits of assistance

An officeholder needs records to locate property, assess claims and decide whether to litigate. Administrative need does not make every foreign information request permissible. The debtor's duty to deliver its own records, compulsory production by an independent third party and disclosure for a specific lawsuit are different matters. Their legal bases, scope and confidentiality protections may differ materially.

In *Singularis Holdings v PricewaterhouseCoopers*, [2014] UKPC 36, decided on 10 November 2014 on appeal from Bermuda, a majority of the Privy Council recognised a limited common law power to assist a foreign liquidation. The appeal nevertheless failed: assistance could not be used to overcome the absence of the relevant power under the law of the liquidators' appointment. The members differed on the foundation and development of common law powers. The result does not provide unrestricted international discovery to foreign liquidators. [15]

A well-defined request identifies the holder, period, transaction categories and legal purpose. A demand for everything concerning a group makes necessity harder to assess and strengthens objections involving other parties' confidential information. To investigate a particular payment, the starting point may be the instruction, statement, recipient details and supporting agreement. Expansion should follow evidence of connections, rather than an assumption that the holder must possess useful material somewhere.

Before large datasets are transferred, applicable privilege, confidentiality and personal-data rules need consideration. A shared international repository does not remove local restrictions. Role-based access, export logs, preservation of originals and a process for protected material can support lawful handling. These measures also help establish that records were not altered after receipt.

Where material is relevant both to the estate and to a criminal defence, permitted use should be considered in advance. Records obtained under an order for a specified purpose do not automatically become available for publication or onward disclosure to another authority. Further permission may be required. The working record should identify the source of each dataset and the conditions attached by the court or supplying party.

For electronic evidence, the original format should be preserved where it can lawfully be obtained, in addition to a convenient PDF. Metadata, conversation sequence and attachments may change the meaning of an isolated page. A translation should retain the sender, date, currency and context. Technical accuracy has direct legal value where management functions or transfers are disputed.

The team should also maintain a distinction between absence of a record and proof that an event did not occur. A search limited to one mailbox or one accounting system may be incomplete. The request and response should record the scope of the search, the custodians consulted and any stated retention limitation. This allows the court to assess the actual evidential significance without turning an incomplete archive into an unwarranted factual conclusion.

17. Creditor claims and multiple recoveries

Recognition is not a substitute for filing a claim in the correct form and procedure. A creditor must identify the recipient, deadline, accepted language, supporting documents and consequences of omission. The European framework contains rules on information for foreign creditors and lodging claims, but their application must be checked alongside the domestic procedure. The officeholder's general awareness of a debt should not be treated as a complete filing. [1]

A claim should separate principal, interest, costs, currency and security. Payments, set-offs, disputed components and recoveries from other proceedings should be identified. Where another group company guarantees the debt, there are claims against different obligors, not an unrestricted right to receive the same loss several times without accounting for satisfaction.

Section 1532 of the Bankruptcy Code addresses payments in concurrent proceedings while preserving its qualification concerning secured claims and rights in rem. Its mechanism restricts further payment on the same claim until the relevant proportional position of creditors of the same class has caught up. This specific formula should not be transposed indiscriminately to every international distribution or used to collapse different debtors and obligations into one. [26]

A practical ledger links each receipt to the obligation it satisfies. Syndicated and assigned debts require identification of who may prove and who actually received the money. Payment to an agent may not yet have been distributed among participants. Without this detail, teams can submit inconsistent calculations while each believes it is using accurate accounting information.

A disputed claim may justify a reserve, provisional treatment for a particular purpose or another available domestic mechanism. The correct solution depends on the law and stage of the proceeding. The practical objective is to avoid holding up every distribution while preserving the disputed creditor's effective opportunity to receive payment if successful. The amount and duration of a reserve should be tied to the actual risk, rather than selected without a reasoned calculation.

Participation has procedural consequences as well as financial benefits. Filing a claim, voting or receiving a distribution may matter to jurisdiction or the binding force of related decisions. New Cap illustrates that these are not necessarily neutral administrative acts. Before participating, the creditor should consider which objections remain available, how they must be preserved and whether the relevant court accepts the proposed method. [14]

The creditor should also distinguish a reservation of rights in correspondence from an effective procedural step. An email stating that nothing is admitted may not neutralise conduct that the applicable law treats as submission. The responsible lawyers should agree on the intended position before the filing occurs. Reconstructing it after an adverse order is usually more difficult than making the jurisdictional choice consciously at the outset.

18. Corporate groups and coordination protocols

Coordination does not mean consolidation of every group estate. Companies may have different creditors, guarantees, charged assets and conflicts. A joint plan can preserve operating value, but should not shift one company's losses to another company's creditors without a legal basis. Separate proprietary positions should be established before selecting the mechanism for collective work.

The European Regulation provides tools for cooperation and coordination among proceedings involving group members. UNCITRAL's 2019 Model Law on Enterprise Group Insolvency offers a separate international model. Neither European coordination nor adoption of a model text at international level automatically creates a single debtor. National implementation and the conditions of the relevant procedure remain essential. [1, 25]

A practical protocol can address information sharing, designated contacts, valuation, coordination of sales and allocation of common expenses. It should preserve each court's authority and the rights of affected persons to object. Where a combined sale includes assets from several estates, the allocation of consideration requires separate justification. A successful sale of the business as a whole can otherwise conceal a transfer of value between creditor groups.

Rules for deadlock are particularly useful. What happens if one court refuses approval, an officeholder is replaced or one company's creditors reject the plan? Which steps continue, which are suspended and who pays the interim storage and operating costs? These questions are easier to resolve before a transaction is signed than under pressure to complete it immediately.

Court-to-court communication should be transparent. Coordination of timetables and technical issues must not become a route to evidence outside the applicable procedure or informal resolution of disputes without the parties. A protocol is valuable because it makes cooperation visible and accountable. It does not confer jurisdiction or powers that the courts and officeholders do not otherwise possess.

For a small group, a short operational arrangement for one sale or dataset may be sufficient. A more elaborate structure is justified where its cost is lower than the losses caused by fragmented action. A lengthy multilateral protocol is not itself evidence of professional quality. The mechanism should match the actual number of dependencies and conflicts.

The protocol should be reviewed when its assumptions change. Discovery that a purported intercompany asset is disputed may alter the allocation of a sale price. New criminal restrictions may change the completion timetable. Replacement of a representative may require new authority for earlier commitments. A review clause tied to material events is more useful than assuming that an arrangement approved at the beginning can govern every later development unchanged.

19. Applicable law and pending litigation

International jurisdiction and applicable law answer different questions. A court competent to open proceedings does not necessarily apply its own law to every connected relationship. The strategy should separately identify the law governing insolvency effects, the contract, proprietary security and any pending judicial or arbitral proceedings. Replacing that analysis with a general reference to *lex concursus* risks an invalid disposal or an unjustified abandonment of litigation.

Within the European framework, Article 7 starts from the law of the opening state, while special provisions make exceptions and distinctions concerning matters such as rights in rem, set-off, employment and detrimental acts. Article 18 separately addresses the effects of insolvency on a pending lawsuit or arbitration concerning a right or asset of the estate. That does not mean that the entire substantive dispute is governed by the same law. [1]

For secured lending, the review should cover creation, validity, registration and possible avoidance of the security, as well as the amount of the debt. A mortgage entry may establish an existing registered interest without resolving the validity of the underlying obligation. Equally, an insolvency judgment does not dispense with the legal requirements for altering a foreign property register.

Set-off requires examination of mutuality, ownership of the respective claims, their timing and applicable restrictions. Consolidated group accounts do not establish mutual obligations between two particular entities. If a claim was assigned shortly before insolvency, that transaction and its consequences need analysis. The exercise cannot be reduced to subtracting two figures appearing in a group spreadsheet.

Pending arbitration raises a separate representation problem. The tribunal should be informed of the insolvency, the officeholder's authority explained and any necessary procedural determination sought. A decision to stop funding a defence is not a stay of the arbitration. A deadline should not be ignored on the assumption that a foreign moratorium automatically suspends every tribunal in every country.

A short choice-of-law memorandum for each material transaction should identify which law determines validity, who may challenge the act, where the claim can be brought and how a judgment would be enforced. It should address the strongest alternative classification. If the outcome depends on whether a transaction transferred ownership or merely created security, that classification should be investigated before extensive argument about the resulting priority.

The memorandum should also identify the factual gaps that affect the legal answer. The date of registration, identity of the counterparty or exact contractual wording may be decisive. These are questions for targeted evidence collection. A general survey of national insolvency law can be accurate yet fail to resolve the transaction because the critical instrument has not been obtained.

20. Practical scenarios: COMI, recognition and real estate

Scenario 1. A registered-office move shortly before filing

A group company is registered in State A. Several weeks before an insolvency application, its registered address moves to State B, where a newly appointed director and an adviser work. Accounting, creditor negotiations and approval of payments continue in A. Management expects to use a more suitable restructuring procedure in B. Both countries participate in the European Regulation.

The first issue is the company's actual COMI at the legally relevant date, rather than the attractiveness of the preferred procedure. A recent registered-office move prevents reliance on the corresponding presumption within the prescribed period. It does not replace the factual inquiry with an automatic answer. The team must establish which functions moved, when creditors learned of the changes and who made decisions after the relocation. [1, 3-5]

The working evidence package contains the old and new signing authorities, communications with major creditors, payment instructions and personnel records. Contradictions should be addressed directly. If the director in B merely signs decisions already made in A, the appointment should not

be described as a complete transfer of administration. If administration genuinely moved, independent external relationships can help demonstrate the change.

The desired practical outcome is a reasoned jurisdictional position and a realistic alternative route. The potential to rescue the business does not justify inaccurate facts. Equally, an opposing creditor should not stop at alleging forum shopping. It should identify the circumstances contradicting the asserted COMI and explain their legal significance.

Before filing, the team should also identify any earlier application and establish its current procedural status. The effect of a prior filing cannot be decided by the date on a press release. The court record and the applicable regime are required. This check prevents the relocation argument from being developed in isolation from an already existing jurisdictional obstacle.

Scenario 2. A United States account and urgent recognition

A foreign representative identifies the debtor's bank account in the United States. The recognition hearing has not yet taken place, and another party threatens execution. The representative wants to stop transactions, obtain statements and transfer the entire balance to the main estate. These requests are related economically but rest on different powers and have different consequences.

The application should distinguish provisional protection under section 1519, recognition itself and subsequent relief. Immediate preservation requires a concrete risk and an appropriate temporary response. Disclosure requires a relevant period and defined categories. Transfer for distribution requires attention to affected creditors and the legal basis for disposing of the balance. A foreign appointment order alone does not justify all three. [7-12]

A practical proposal might preserve funds in a specified account pending determination of the disputed issues, with reporting and an opportunity for affected persons to apply. Information obtained in the meantime may establish whether the full balance belongs to the debtor. If some funds are held for customers, ownership must be addressed before distribution. Refusing an immediate remittance is not necessarily a refusal to cooperate with the insolvency.

The bank should receive an order that identifies its role and the acts required. It should not be expected to decide competing proprietary claims merely because an officeholder has been recognised. The process can preserve the disputed value while the proper parties are heard. That approach also reduces the risk of an irreversible payment followed by costly recovery litigation.

Scenario 3. A foreign apartment owned by a company

An individual is bankrupt in State A and owns shares in a foreign company that holds English real estate. The trustee lists the apartment as a personal asset and instructs a transaction intermediary to arrange a sale. There is no separate determination of the company's rights, and its liabilities have not been investigated.

The initial error is to equate the shares with the company's building. The inquiry must identify the individual's estate, the legal position of the shares, valid corporate authority and the company's creditors. English recognition and the ability to dispose of the property then require separate consideration. Kireeva illustrates limits of common law assistance but does not replace analysis of the entire corporate structure. [16]

A lawful strategy may involve sale of the shares, enforcement of a genuine receivable against the company or another properly authorised corporate process. Each option should be assessed for net value and enforceability. Creditors should not be promised the apartment's gross market value without accounting for company liabilities, security, transaction expenses and title restrictions.

The strategy may also require cooperation from persons who are not parties to the individual's insolvency. Their duties and rights should be established rather than assumed. A company director cannot be instructed simply as though the company were an account held personally by the shareholder. Correct identification of the asset changes both the proposed order and the negotiation with potential buyers.

21. Practical scenarios: seizure, records and distributions

Scenario 4. French property subject to criminal seizure

A liquidator wishes to sell French real estate to stop continuing maintenance costs. A criminal seizure was imposed after liquidation began. A buyer has been found, but the liquidator assumes that the earlier collective proceeding automatically allows the later restriction to be ignored. That position confuses chronology with the competent court and the legal effect of the seizure.

The team should obtain the complete seizure decision and identify its basis, the persons notified and the available application to the criminal jurisdiction. At the same time, it can prepare a valuation, evidence of expenses and a proposal for controlled proceeds if the law permits the contemplated realisation. The insolvency court should not be used to bypass the question of the criminal measure's validity. [23, 24]

The practical argument is not that creditors invariably take precedence over public objectives. It is that a lawful arrangement may preserve both sets of interests. An independent report could demonstrate deterioration of the property; an identified transaction could support a transparent price; and a controlled account could preserve value pending a later entitlement decision. Each element still needs a legal basis and approval from the appropriate authority.

If permission is obtained, the sale documents should specify completion conditions, destination of the price and any restrictions that remain. Release of the criminal measure does not automatically discharge a mortgage. The buyer needs an implementable transaction, rather than a collection of letters expressing different views about priority.

Scenario 5. A demand for an auditor's entire archive

A foreign officeholder asks an independent auditor in another country for ten years of working papers, correspondence and internal assessments. The request is justified by the duty to investigate the insolvency. Some records belong to the auditor, some contain information about other clients, and some may be relevant to a future claim against the auditor itself.

The legal basis and proposed use should be identified for each category. Singularis demonstrates that general assistance to a foreign liquidation cannot supply every missing power. If a specific statutory mechanism is available, it should be analysed on its own terms; the limits of a particular common law decision cannot automatically be extended to a different instrument. [15]

A practical approach starts with the company's records and identified transactions, explains any need to expand the request, and provides a process for confidential material and compliance costs. If the purpose is to prepare a claim against the auditor, the appropriate litigation evidence mechanism should be addressed openly. Changing the stated purpose without informing the court may undermine confidence in the applicant and complicate lawful use of the material already obtained.

The team should avoid treating the auditor's objection as proof that it is concealing wrongdoing. There may be legitimate disputes about ownership, scope, privilege or the burden of the search. A narrowed request can test those issues more effectively than a general accusation. If relevant material is withheld, the applicant can then present a defined dispute for determination.

Scenario 6. A creditor receives payment in two countries

A creditor proves the same debt in main and local proceedings. It receives 20 per cent in the first proceeding while a distribution to creditors of the same rank is being prepared in the second. A guarantee from another company also exists. Different teams use different currencies and do not exchange information about receipts, creating a risk that the proposed calculations overstate the remaining entitlement.

The first step is to distinguish claims against the same debtor from the separate claim against the guarantor, and then account for satisfaction of the underlying obligation. Each receipt should identify the date, currency, applicable conversion rule, amount discharged and continuing security. Section 1532 illustrates a specific coordination mechanism, but does not replace examination of each proceeding's law or the guarantee's terms. [26]

The working result is a reconciled account of the obligation with separate legal bases for the claims. The relevant officeholders should be notified through the required procedure, amounts adjusted where necessary and evidence retained. Transparent reconciliation protects the recipient against a later demand to repay an excess, as well as protecting other creditors. The objective is maximum lawful satisfaction, not accumulation of incompatible figures in different files.

The reconciliation should be updated when funds are received, not only when a distribution is announced. An expected payment may fail, be reduced or be applied differently under the governing documents. Recording the actual event and its legal effect avoids premature reductions and later double counting. Responsibility for updating the account should be assigned to a particular team member.

22. Economics and sequencing of the international strategy

A foreign proceeding should be evaluated by expected net value rather than the asset's headline price. The calculation includes recognition, local advisers, translation, preservation, valuation, any required security and enforcement. Time, prospects of legal success and practical collectability should be considered separately. These are working assumptions for decision-making, not statistically established probabilities.

An asset valued at one million euros may secure seven hundred thousand euros of debt. If sale and international proceedings consume another two hundred thousand, litigation over the remaining value is a different proposition from recovery of an unencumbered million. A modest immediate

preservation expense may nevertheless be justified before the full litigation decision is made. The cost of preserving an option should be distinguished from the cost of pursuing it to completion.

The sequence should be driven by irreversible risks. Evidence is preserved, deadlines checked and imminent loss addressed through available lawful measures. Authority and recognition routes are then clarified. Separate claims, realisation and distribution follow as appropriate. Some tasks proceed in parallel, but their dependencies must remain explicit. A sale cannot be promised while the team has not established the effect of an existing prohibition.

Budget review points are useful. Bank records may show that the apparent asset belongs to a third party. Title review may show that security absorbs its value. Creditor objections may establish the need for another proceeding or a material reserve. At each point the team should be able to recommend narrowing or stopping a branch that no longer makes economic sense.

Third-party litigation funding also needs separate evaluation. Funding price, revenue allocation, control of settlement and conflicts can change the estate's return materially. A funder's willingness to pay for litigation does not establish the claim's legal merits. The officeholder should understand what remains for creditors under success, compromise and failure scenarios, including the treatment of expenses incurred before the funding agreement.

Reporting should distinguish committed expenditure from future discretionary expenditure. A projected budget is easier to assess when decision-makers can see what can still be avoided. It should also identify the event expected to justify the next stage, such as confirmation of ownership or availability of an enforcement route. This makes the budget a tool for managing the case rather than a retrospective list of invoices.

A reasonable strategy can change after evidence is obtained. That is not necessarily a failure of the initial analysis. The relevant question is whether the initial preservation and investigation costs were justified by what was known, and whether the team reacted promptly to new information. Continuing simply because recognition has already been obtained can convert a useful procedural success into an uneconomic recovery effort.

23. Recommendations and conclusions

Observatoire ARGA recommends starting with a map of debtors, assets and restrictions, rather than selecting the best-known international procedure first. COMI, ownership, creditor structure and operative appointments should be established separately for each legal person. Group coordination is useful after that exercise; before it, a common business name can conceal different proprietary interests and duties.

A recognition application should identify the particular consequences requested. Temporary preservation, disclosure, administration and distribution should be justified separately. The less reversible a measure is, the more carefully the affected rights and protective arrangements should be explained. United States provisions expressly distinguish relief and protection; other frameworks require their own analysis of available powers and safeguards. [9-12]

Objections should be equally precise. Absence of the required connection, defective authority and public policy are different grounds. Section 1506 of the Bankruptcy Code uses a manifest-contrariety standard. It should not be converted into a general appeal on the merits of a

foreign decision. At the same time, a cooperation mechanism does not justify disregarding an actual inability to defend or participate. [27]

For overlapping criminal and corporate cases, a common register of orders should identify the court, date, addressee, asset, duration, means of challenge and later modification. It should be updated after each material decision and consulted before property is dealt with. Different lawyers may run different proceedings, but a bank, custodian or buyer should not receive incompatible instructions about the same asset.

Creditors and investors should receive reporting that identifies the obstacles remaining between a procedural success and actual value. Recognition should be recorded as a procedural achievement, not as recovery. Receipt of records is an evidential achievement, not confirmation of every suspected wrong. This distinction supports a reasoned decision about further expenditure and reduces pressure to overstate what an order has accomplished.

The recommendations do not depend on creating the largest possible number of parallel proceedings. Where a targeted order or negotiated arrangement provides adequate lawful protection, it may preserve more value than another full administration. Where cooperation would leave an essential right without an effective remedy, a separate process may be necessary. The comparison should concern available protections and net outcomes, rather than an abstract preference for centralisation or territorial control.

Effective cross-border insolvency combines cooperation with precise limits on authority. COMI connects the main proceeding to actual administration. Recognition enables interaction between legal systems. Separate rules on claims, property and public measures determine the reach of the result. The practical task is to follow that sequence with limited loss of value while preserving the ability of affected persons to protect their rights.

Sources and references

Legal cut-off: 28 September 2026. Bracketed numbers refer to the entries below. Judicial holdings are confined to the issues decided; the scenarios in chapters 20-21 are hypothetical. Practical proposals are the report's analysis.

- [1] Regulation (EU) 2015/848 on insolvency proceedings (recast). Articles 1-8, 18-22, 32-36, 53-55 and Chapter V. <https://eur-lex.europa.eu/eli/reg/2015/848/oj/eng>
- [2] UNCITRAL Model Law on Cross-Border Insolvency (1997). Official UNCITRAL overview; model text reproduced by the Australian Treasury. National enactment must be distinguished from the model. https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency ; <https://treasury.gov.au/publication/clerp-paper-no-8-proposals-for-reform-cross-border-insolvency/appendix-uncitral-model-law>
- [3] CJEU. Eurofood IFSC, C-341/04, 2 May 2006, ECLI:EU:C:2006:281. COMI and the separate assessment of a subsidiary. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62004CJ0341>
- [4] CJEU. Interdil, C-396/09, 20 October 2011, ECLI:EU:C:2011:671. Central administration and establishment. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62009CJ0396>
- [5] CJEU. Galapagos BidCo., C-723/20, 24 March 2022, ECLI:EU:C:2022:209. Continuing jurisdiction and the Brexit transition. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62020CJ0723>
- [6] The Cross-Border Insolvency Regulations 2006, SI 2006/1030, Schedule 1. Great Britain. <https://www.legislation.gov.uk/ukSI/2006/1030>
- [7] 11 U.S.C. § 1515. Application for recognition and supporting evidence. <https://www.law.cornell.edu/uscode/text/11/1515>
- [8] 11 U.S.C. § 1517. Recognition as a main or non-main proceeding. <https://www.law.cornell.edu/uscode/text/11/1517>
- [9] 11 U.S.C. § 1519. Provisional relief; limitation concerning police and regulatory action. <https://www.law.cornell.edu/uscode/text/11/1519>
- [10] 11 U.S.C. § 1520. Effects of recognition of a foreign main proceeding. <https://www.law.cornell.edu/uscode/text/11/1520>
- [11] 11 U.S.C. § 1521. Discretionary relief and its limits. <https://www.law.cornell.edu/uscode/text/11/1521>
- [12] 11 U.S.C. § 1522. Protection of creditors and other interested persons. <https://www.law.cornell.edu/uscode/text/11/1522>
- [13] 11 U.S.C. § 1523. Standing to bring specified avoidance actions in a case under another chapter. <https://www.law.cornell.edu/uscode/text/11/1523>
- [14] UK Supreme Court. Rubin v Eurofinance; New Cap Reinsurance v Grant [2012] UKSC 46, 24 October 2012. Enforcement and submission. https://supremecourt.uk/uploads/uksc_2010_0184_judgment_74cd4055b9.pdf
- [15] Privy Council. Singularis Holdings v PricewaterhouseCoopers [2014] UKPC 36, 10 November 2014. Bermuda appeal; common law assistance and information. https://jcpc.uk/uploads/jcpc_2014_0040_judgment_3c81c98b50.pdf
- [16] UK Supreme Court. Kireeva v Bedzhamov [2024] UKSC 39, 20 November 2024. English immovables and common law recognition. <https://www.supremecourt.uk/cases/judgments/uksc-2022-0037>
- [17] Cour de cassation, 1re civ., 20 February 2007, no 05-14.082 (Cornelissen). General exequatur conditions. <https://www.legifrance.gouv.fr/juri/id/JURITEXT000017636147/>
- [18] Code de commerce, Article L. 622-21. Individual creditor actions and enforcement. https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044052603
- [19] Code de commerce, Article L. 641-9. Liquidation, proprietary powers and retained rights. https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000045178146

[20] Insolvency Service. Cross-border Insolvencies: Recognition and Enforcement in EU Member States, 24 March 2021. Post-transition framework. <https://www.gov.uk/government/publications/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states/cross-border-insolvencies-recognition-and-enforcement-in-eu-member-states>

[21] Insolvency Service. Implementation of two UNCITRAL Model Laws on Insolvency: Government response, 10 July 2023. Policy discussion; not an enactment. <https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency/outcome/implementation-of-two-uncitral-model-laws-on-insolvency-summary-of-consultation-responses-and-government-response>

[22] 11 U.S.C. § 362, especially subsection (b)(1) and (4). Criminal, police and regulatory exceptions. <https://www.law.cornell.edu/uscode/text/11/362>

[23] Code de procédure pénale, Article 706-147. Special seizure and cessation of payments; version applicable at the cut-off. https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000022470110

[24] Cour de cassation, com., 15 November 2017, no 16-17.868, ECLI:FR:CCASS:2017:CO01376. Liquidator, criminal seizure and competent jurisdiction. <https://www.legifrance.gouv.fr/juri/id/JURITEXT000036052928/>

[25] UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment (2019). Model framework, requiring domestic implementation. <https://uncitral.un.org/en/MLEGI>

[26] 11 U.S.C. § 1532. Payment in concurrent proceedings. <https://www.law.cornell.edu/uscode/text/11/1532>

[27] 11 U.S.C. § 1506. Public policy exception. <https://www.law.cornell.edu/uscode/text/11/1506>