

Cross-Border Insolvency in the U.S. and U.K.: Conflicting Approaches to Defining the Locus of a Debtor's "Center of Main Interests"

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I. Introduction

In order to take up a "foreign"¹ corporate insolvency case in the United States (U.S.) or the United Kingdom (U.K.), courts have to determine that a "foreign main proceeding" is pending in a country where the debtor has its "center of main interests" ("COMI"). Unfortunately, neither the U.S. Bankruptcy Code² nor the U.K. Cross-Border Insolvency Regulation,³ the prevailing laws in each jurisdiction, defines COMI. This lack of clarity has left courts on both sides of the proverbial "pond" with the task of formulating definitions of their own.⁴ U.K. courts, at least, have been remarkably consistent in this endeavor, reaching the near consensus that COMI should be evaluated by asking where a third party, assessing certain objective factors, would perceive the corporate debtor to conduct the bulk of its business operations.⁵ Some U.S. courts, for their part, have reached the same conclusion.⁶ However, other U.S. courts have tied COMI to the

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1. Note that the word "foreign," for purposes of discussing U.K.-based cross-border insolvency proceedings in this paper, means actions brought in the U.K. by parties residing outside of the European Union (EU). "Foreign" retains a more natural meaning in examining U.S.-based cross-border bankruptcy cases here, describing cases involving parties and jurisdictions located outside of the U.S.

2. 11 U.S.C. § 101 et seq.

3. The Cross-Border Insolvency Regulations 2006, SI 2006/1030 (Gr. Brit.).

4. Instead of moving towards a consensus on a definition of COMI in recent years, courts have exerted considerable effort attempting to ascertain the *time* at which COMI should be measured. Courts have tended to resolve this question in one of two ways. First, as in *In re Betcorp*, 400 B.R. 266, 290-91 (Bankr. D. Nev. 2009), courts have held that a debtor's COMI should be measured as of the date of the petition for recognition instead of the date of the opening of the foreign insolvency proceeding. Second, and by contrast, in *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 74 (Bankr. S.D.N.Y. 2011), *aff'd*, 2012 U.S. Dist. LEXIS 88782 (S.D.N.Y. June 25, 2012), the court held that the proper date to measure COMI is the time the foreign insolvency proceeding commenced. While a consensus on the temporal nature of COMI has yet to be resolved, courts appear to be even further behind in terms of arriving at a definition of the term itself.

5. See, e.g., *In re Stanford Int'l Bank Ltd.* [2010] EWCA 137 (Civ) 184.

6. See, e.g., *In re SPhinx, Ltd.*, 351 B.R. 103, 117-18, 351 B.R. 103, 56 (S.D.N.Y. 2006).

debtor's "nerve center," or "principal place of business"—its corporate headquarters.⁷

The succeeding pages will examine the case law defining COMI in the U.S. and U.K. While the Model Law was created in large measure to promote cooperation in cross-border insolvency cases regardless of the forum in which they were being heard,⁸ courts have moved away from this aim, creating discrete definitions of COMI based on the different sources employed to define the term.

II. Legal Background

A. THE EUROPEAN INSOLVENCY REGULATION AND THE UNCITRAL MODEL LAW

In 1997, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Cross-Border Insolvency (the "Model Law").⁹ The Model Law was ratified in that same year by the United Nations General Assembly, and, as of this writing, has been ratified in dozens of states and jurisdictions,¹⁰ including the U.S. (2005)¹¹ and U.K. (2006).¹² The Model Law's purpose is to work as a procedural mechanism—to be incorporated into local insolvency laws—through which debtors and creditors can seek redress in various separate national forums.¹³ The law covers four principal sets of circumstances: (1) "inbound" requests for recognition and assistance of a foreign insolvency case; (2) "outbound" requests by one country that another country recognize a pending case in the former; (3) coordination of proceedings occurring simultaneously in two or more countries; and (4) foreign creditor participation in pending cases.¹⁴

7. See, e.g., *In re Fairfield Sentry Ltd.*, 440 B.R. 60 (Bankr. S.D.N.Y. 2010), *decision aff'd*, 2011 WL 4357421 (S.D.N.Y. 2011), *aff'd*, 714 F.3d 127 (2d Cir. 2013).

8. Model Law, art. 28.

9. G.A. Res. 52/158, U.N. Doc. A/Res/52/158 (Jan. 30, 1998), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT (MODEL LAW), available at http://www.uncitral.org/uncitral_texts/insolvency/1997Model.html. The Model Law itself was based on a predecessor international law, the EU Insolvency Treaty. See EU Regulation, Council Regulation 1346/2000 European Union Regulation on Insolvency Proceedings, 2000 O.J.(L 160), at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R1346:en:HTML>.

10. The following countries have adopted the Model Law: Australia (2008), Canada (2005), Chile (2013), Colombia (2006), Greece (2010), Japan (2000), Kenya (2015), Malawi (2015), Mauritius (2009), Mexico (2000), Montenegro (2002), New Zealand (2006), Philippines (2010), Poland (2003), Republic of Korea (2006), Romania (2002), Serbia (2004), Seychelles (2013), Slovenia (2007), South Africa (2000), Uganda (2011), Great Britain (2006), United States (2005), and Vanuatu (2013). See UNICTRAL website at http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model_status.html.

11. Pub. L. No. 109-8, § 801, 119 Stat. 23 (2005).

12. Cross-Border Insolvency Regulation 2006.

13. G.A. Res. 52/158, U.N. Doc. A/Res/52/158 (Jan. 30, 1998), MODEL LAW, ¶ 20.

14. G.A. Res. 52/158, MODEL LAW GUIDE TO ENACTMENT, *supra* note 9, ¶ 22.

Just as the Model Law injects order and predictability into cross-border insolvency proceedings, its prescriptions are drawn to account for the unique nature of *local* laws and procedures.¹⁵ Obtaining recognition under the Model Law affords debtors the equivalent of an automatic stay from creditor collection actions.¹⁶ Debtors, however, lose the right to transfer or encumber assets that their creditors hope will serve as the source of repayment of debts owed to them.¹⁷ Moreover, embedded in the statute are a number of exceptions and limitations benefitting creditors, who are permitted to oppose recognition after the fact.¹⁸ Creditors further enjoy enhanced notice of foreign recognition.¹⁹ And courts, for their part, may modify or dispense with relief as permitted by the law.²⁰

B. CROSS-BORDER INSOLVENCY IN THE U.S. AND U.K.

In the U.S., the Model Law took the form of Chapter 15 of the U.S. Bankruptcy Code (the Code).²¹ Utilizing Chapter 15, a “foreign representative”²² can file for recognition of a foreign insolvency proceeding in a U.S. court under section 1515.²³ Under Chapter 15, a U.S. court may cooperate with a foreign counterpart by hearing either a “foreign main proceeding”²⁴ or a “foreign non-main proceeding.”²⁵ Under section 1502(4) of the Code, a “foreign main proceeding” means one “pending in the country where the debtor has the center of its main interests”—commonly referred to as its “COMI.”²⁶ The Code specifies, under section 1516(c), that, “[i]n the absence of evidence to the contrary, the debtor’s registered office, . . . is presumed to be the [COMI].”²⁷

As explained in *In re Tri-Continental Exchange Ltd.*, “[i]n effect, the registered office (or place of incorporation) is evidence that is probative of, and that may in the absence of other evidence be accepted as a proxy for,

15. G.A. Res. 52/158, MODEL LAW, *supra* note 9, arts. 25-27.

16. *Id.* art. 20.

17. *Id.*

18. *Id.* art. 21.

19. *Id.* art. 14.

20. *Id.* arts. 17(4), 22(3).

21. See 11 U.S.C. § 1501(a) (“[t]he purpose of this chapter is to incorporate the Model Law . . . so as to provide effective mechanisms for dealing with cases of cross-border insolvency”); H.R. Rep. No. 109-31, 109th Cong., 1st Sess. 105 (2005) (Chapter 15 was meant “to provide effective mechanisms for dealing with cases of cross-border insolvency” and to serve as the “exclusive door to ancillary assistance to foreign proceedings, thus concentrat[ing] control of these questions in one court”).

22. *Id.* at §§ 101(24), 1515.

23. *Id.* at §§ 1504, 1515; see, e.g., *United States v. J.A. Jones Const. Group, LLC*, 333 B.R. 637, 638-39 (E.D.N.Y. 2005).

24. 11 U.S.C. §§ 101(23), 1502(4).

25. *Id.* at § 1521(c).

26. *Id.* at U.S.C. § 1502(4).

27. *Id.* at § 1516(c); see also *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006).

'center of main interests.'"²⁸ But "[t]he registered office . . . does not otherwise have special evidentiary value and does not shift the risk of nonpersuasion, *i.e.*, the burden of proof, away from the foreign representative seeking recognition as a main proceeding."²⁹ The court observed that the legislative history provided additional insight to section 1516(c), noting that "the presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof *where there is no serious controversy*";³⁰ the presumption "permits and encourages fast action in cases where speed may be essential, while leaving the debtor's true 'center' open to dispute in cases where the facts are doubtful."³¹ But the presumption is not the "preferred alternative" in situations where "a separation between a corporation's jurisdiction of incorporation and its real seat" exists.³²

Meanwhile, in the U.K., the Model Law was implemented by the Cross-Border Insolvency Regulations 2006 (CBIR).³³ Instead of carving out an entirely new statutory section within a previously existing portion of the U.K. insolvency scheme,³⁴ legislators proclaimed that the Model Law would "have the force of law,"³⁵ and appended it to the CBIR,³⁶ albeit "with certain modifications to adapt it for application in Great Britain."³⁷ Similar to Chapter 15, there is a presumption under the CBIR that the locale of the company's registered office is one and the same as its COMI.³⁸ Again, this presumption is rebuttable.³⁹

28. *Tri-Continental Exchange*, 349 B.R. at 635.

29. *Id.*

30. See H.R. Rep. No. 31, 109th Cong., 1st Sess. 1516 (2005), U.S. Code Cong. & Admin. News 2005, pp. 88, 175.

31. Jay Lawrence Westbrook, *Locating the Eye of the Financial Storm*, 32 BROOK. J. INT'L L. 3, 15 (2007).

32. *Bear Stearns*, 374 B.R. at 129; see also Westbrook, *Financial Storm*, 32 BROOK. J. INT'L L. at 15.

33. The Cross-Border Insolvency Regulations 2006, SI 2006/1030 (Gr. Brit.).

34. Unlike their counterparts in the United States, courts in the U.K. must navigate not just one—but four—principle sources of law in order to determine the applicable law in any given insolvency case. These sources are: (1) The European Commission Regulation on Insolvency Proceedings (EC Regulation); (2) the Cross Border Insolvency Regulations 2006, which implements the Model Law (CBIR); (3) the Insolvency Act of 1986 (Insolvency Act); and (4) the common law. See EC Regulation on Insolvency Proceedings (No. 1346/2000); Cross-Border Insolvency Regulations 2006; The Insolvency Act 1986, s. 426 (Gr. Brit.). It is an open question which of these sources will remain instructive in U.K. courts after the "Brexit."

35. CBIR, SI 2006/1030, § 2(1).

36. *Id.* Schedule 1.

37. *Id.* at § 2(1).

38. *Id.* Schedule 1 (citing Model Law, art. 16(3)).

39. *Id.*

III. Developments and Problems

Courts in the U.S. and U.K. have taken different approaches to defining COMI: (1) the “nerve center” (or “principal place of business”) test⁴⁰ and (2) the “objective third party” analysis.⁴¹

A. THE “NERVE CENTER” (OR “PRINCIPAL PLACE OF BUSINESS”) TEST

In the U.S., one COMI definition stems from the familiar notion of “principal place of business”—a term that some courts have equated to “center of main interests.”⁴² From its earliest use, courts have used the corporate headquarters as the defining feature of the debtor’s COMI. In one early case, *In re Tri-Continental Exchange Ltd.*, the court used the “principal place of business” test to determine that the COMI of certain debtor insurance companies was St. Vincent and the Grenadines; it therefore granted recognition of the case as a foreign main proceeding under Chapter 15.⁴³ The court reached this conclusion even though the debtors had engaged in the vast majority of their fraudulent activities in the U.S. and Canada. More important for the court were other factors, including the debtors’ organization as international business companies in St. Vincent and the Grenadines, where they conducted regular business operations at their registered offices in Kingstown, St. Vincent. These facts, the court found, suggested that the debtor-insurer’s “principal place of business” was one and the same as its COMI.⁴⁴ After the *Tri-Continental* decision, the “principal place of business” analysis gained further refinement, but it did not come from the bankruptcy courts.

Instead, the U.S. Supreme Court served as the prime mover. In *Hertz v. Friend*,⁴⁵ the Court used American legal conceptions of the “principal place of business” to define it as the corporate “nerve center,” or headquarters. In *Hertz*, the Court considered a class-action suit by certain California citizens who alleged that a corporation headquartered in New Jersey had violated California’s wage and hour laws.⁴⁶ Ruling for the plaintiffs, the Court held that the “principal place of business” in the federal diversity jurisdiction statute refers to the place where a corporation’s officers “direct, control, and coordinate the corporation’s activities”—in other words, its “nerve center.”⁴⁷

40. See, e.g., *In re Fairfield Sentry*, 440 B.R. 60 (Bankr. S.D.N.Y. 2010).

41. See, e.g., *In re Stanford Int’l Bank Ltd.* [2010] EWCA 137 (Gr. Brit.).

42. See, e.g., *In re British American Ins. Co. Ltd.*, 425 B.R. 884, 908-09 (Bankr. S.D. Fla. 2010); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008); *In re Tri-Continental Exchange Ltd.*, 349 B.R. 627, 633 (Bankr. E.D. Cal. 2006).

43. *In re Tri-Continental Exchange Ltd.*, 349 B.R. at 629.

44. *Id.*

45. See *Hertz Corp. v. Friend*, 559 U.S. 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2009).

46. *Hertz*, 559 U.S. at 81.

47. *Id.* at 92-93.

Normally, the Court added, this place should be the locus of the corporation's headquarters, so long as the headquarters serves as the "actual center of direction, control, and coordination . . . [and] not simply an office where the corporation holds its board meetings."⁴⁸

Following the *Hertz* decision, some bankruptcy courts have equated a company's COMI with its "nerve center," or headquarters.⁴⁹ In one frequently-cited case, *In re Fairfield Sentry Ltd.*, the court applied this analysis to hold that the debtors' base of operations—its COMI—was the British Virgin Islands rather than the U.S.⁵⁰ Reaching this conclusion, the court found that the debtors had effectively quit operating in New York more than eighteen months before filing the recognition petition in the U.S., and seven months before commencing the foreign insolvency proceedings.⁵¹ Moreover, after ceasing operations, the debtors made most of their administrative decisions from the British Virgin Islands.⁵²

B. THE "OBJECTIVE THIRD PARTY" TEST

U.K. courts' construction of COMI conflicts with that of their U.S. counterparts in large measure because of the legal sources from which they have interpreted this term. Rather than understanding COMI as a purely common law principle, U.K. jurists have looked to other significant domestic cross-border insolvency law—the European Union Regulation on Insolvency Proceedings (EC Regulation)—which applies to all EU Member States (Member States) except for Denmark.⁵³ Although the EC Regulation does not extend beyond EU borders, U.K. courts have considered it persuasive because it shares certain common assumptions with the Model Law, including the COMI concept.⁵⁴ Much like a "foreign main proceeding" in the CBIR, in the EC Regulation a "main proceeding" can only be opened in a Member State if that state is the corporate debtor's COMI.⁵⁵ Unlike the CBIR, the EC Regulation defines COMI as—if not the situs of the company's registered office (here, too, a foreign representative must overcome a rebuttable presumption)—the location a third party would perceive as being the center of the debtor's operations.⁵⁶ While U.S. courts diverge in their construction of COMI, courts in the U.K. presently are of

48. *Id.* at 93.

49. See, e.g., *In re Fairfield Sentry Ltd.*, 440 B.R. 60 (Bankr. S.D.N.Y. 2010), *aff'd*, 2011 WL 4357421 (S.D.N.Y. 2011), *aff'd*, 714 F.3d 127 (2d Cir. 2013).

50. *In re Fairfield Sentry Ltd.*, 440 B.R. 60, 64-65 (S.D.N.Y. 2010).

51. *Id.*

52. *Id.*

53. EU Regulation, Council Regulation 1346/2000 European Union Regulation on Insolvency Proceedings, 2000 O.J. (L 160).

54. See EC Regulation, arts. 12-14, 17.

55. See *id.* art. 12.

56. See EC Regulation, art. 3(1), Preamble ¶ 13; see also Case 341/04, *In re Eurofood IFSC Ltd.*, (¶ 33), 2006 E.C.R. I-3813.

one mind in construing the term:⁵⁷ consistent with the EC Regulation, they seem more concerned with how the debtor's pre-insolvency activities appeared to third parties.⁵⁸

The European Court of Justice's decision in *In re Eurofood IFSC Ltd* serves as the principal authority through which U.K. courts have subsequently applied the third party test to cases invoking the CBIR.⁵⁹ In *Eurofood*, the European Court of Justice held that COMI "must be identified by reference to criteria that are both objective and ascertainable by third parties," and that "objectivity and that possibility of ascertainment by third parties are necessary in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open main insolvency proceedings."⁶⁰ Seizing on this analysis, the court in *In re Stanford Int'l Bank Ltd.* held that an objective observer's perceptions of the debtor's activities should be the controlling element in determining COMI for CBIR purposes because "it provides certainty and foreseeability for creditors of the company at the time they enter into a transaction."⁶¹ In so holding, the court reversed its previous ruling in *In re Lennox Holdings plc*, where it found that determining the "head office" was determinative of COMI.⁶² The court preferred the objective, third party perception test, which it said "provide[d] certainty and foreseeability for creditors of the company at the time they enter into a transaction."⁶³ In a later case, *In re Kaupthing Capital Partners II*, the court observed that it "is to have regard to factors already in the public domain, or which would be apparent to a typical third party doing business with the body, excluding such matters as might only be ascertained on inquiry."⁶⁴

As discussed above, some U.S. courts have interpreted COMI to mean the "principal place of business" or "nerve center" of a corporate debtor; however, another line of U.S. case law both acknowledges and applies the objective third party analysis set forth in the EC Regulation, *Eurofood*, and its progeny.⁶⁵ In an early case looking to these U.K. sources in the U.S., *In re*

57. Notably, some U.K. courts have cast doubt on the appropriateness of a "nerve center" or "head office" test to determine a debtor's COMI. For instance, in *In re Kaupthing Capital Partners II Master LP, Inc.*, [2011] B.C.C. 338, 342, the court stated that, "the place where the body's head office functions are carried out is only relevant if so ascertainable by third parties."

58. See, e.g., *Kaupthing Capital*, [2011] B.C.C. 338.

59. Case 341/04 (¶ 33), *In re Eurofood IFSC Ltd.*, 2006 ECR I-3813.

60. *Id.*

61. *In re Stanford Int'l Bank Ltd.*, [2010] EWCA (Civ) 137; see also *In re Lennox Holdings plc* [2008] EWHC B11 (Ch).

62. *In re Lennox Holdings plc*, [2008] EWHC B11 (Ch).

63. *Id.*

64. *Id.*

65. See, e.g., *In re British American Isle of Venice (BVI), Ltd.*, 441 B.R. 713, 720 (Bankr. S.D. Fla. 2010); *In re Fairfield Sentry Ltd.*, 2011 WL 4357421, *4 (S.D.N.Y. 2011), *aff'd*, 714 F.3d 127 (2d. Cir. 2013); *In re Ran*, 607 F.3d 1017, 1023, 53 (5th Cir. 2010); *In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 76-77 (Bankr. S.D.N.Y. 2011), *aff'd*, 474 B.R. 88 (S.D.N.Y. 2012).

Sphinx, Ltd., the court concluded that while the presumption of the debtor's COMI is its place of registration or incorporation, various factors could nevertheless rebut it, including: the location of the debtor's headquarters; the location of those who "actually manage" the debtor (which may be one and the same as the headquarters); the location of the debtor's primary assets; the location of the majority of the debtor's creditors, or of a majority of creditors; the law of the most applicable jurisdiction; and the perception of third parties.⁶⁶ Other courts subsequently followed.⁶⁷

Drawing on *Sphinx*, the court in *In re British American Insurance Co., Ltd.* found that although the debtor was incorporated in the Bahamas (and its judicial manager was appointed there), the Bahamas were not its COMI.⁶⁸ The court reached this conclusion based in part on the fact that the debtor's headquarters were located in Trinidad, where the debtor's subsidiary conducted its financial, administrative, actuarial, legal, policy, administration, and claims processing. Further, the subsidiary's employees managed the day-to-day affairs of the company. Moreover, the majority of the debtor's assets were located in its Eastern Caribbean branches, while its creditors were located outside of the Bahamas.⁶⁹ Finally, its policyholders and creditors were unlikely to perceive that the debtor's operational hub was in the Bahamas given that its business was not conducted there.⁷⁰ Therefore, the Bahamas proceeding did not fall within the definition of a "foreign main proceeding."⁷¹ In an even earlier case, *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, the court used the same analysis to reject a foreign main proceeding designation of a "letterbox" limited liability company whose registered office was located in the Cayman Islands.⁷² The court reached this conclusion because the company had no employees or managers in the Cayman Islands. Rather, both its investment manager and administrator were based in the U.S., along with its books and records, and all of the company's liquid assets.⁷³

By contrast, in *In re British American Isle of Venice (BVI) Ltd.*, the court used the aforementioned factors to find that the debtor's COMI was the British

66. *In re Sphinx, Ltd.*, 351 B.R. 103, 117-18 (S.D.N.Y. 2006).

67. See, e.g., *In re British American Insurance Co. Ltd.*, 425 B.R. 884, 909, 52 Bankr. Ct. Dec. 286 (S.D. Fla. 2010). In deciding whether to grant recognition of a foreign main proceeding of a Chapter 15 petitioner in the Bahamas, the court weighed several non-exclusive factors, including the location of: the debtor's headquarters; those who "actually manage the debtor," which may be one and the same as the headquarters; the debtor's "primary assets"; the majority of the debtor's creditors, or a majority of the creditors potentially "affected" by the case; and finally, the jurisdiction "whose law would apply to most disputes." In addition, the Court considered the "expectations of third parties with regard to the location of a debtor's COMI."

68. *Id.* at 911-12.

69. *Id.*

70. *Id.*

71. *Id.*

72. *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122 (S.D.N.Y. 2007).

73. *Id.*

Virgin Islands because the corporation (as well as its liquidator, who had managed the debtor and its subsidiaries for a year prior to the filing for recognition) was formed, registered, and headquartered there—along with more than 80 percent of its total assets, its books and records, and registered agent.⁷⁴ In another case, *In re Millennium Global Emerging Credit Master Fund Limited*, the court recognized a foreign main proceeding, holding that the debtor's COMI was Bermuda—although some factors “point[ed]” toward other locales.⁷⁵ The court noted that two of the debtors' three directors were located in Bermuda.⁷⁶ These directors had the right to replace all of the debtors' other agents, and to determine whether to place the funds into an insolvency proceeding. Moreover, the funds' bank, their custodian, and auditors also resided there.⁷⁷ Thus, without management, investors, creditors, or property in Bermuda, the court found that the debtors' COMI was Bermuda.⁷⁸

IV. Conclusion

Agreement has not yet emerged both domestically and internationally on the proper definition of COMI. While the Model Law was intended to usher in international cooperation in cross-border cases,⁷⁹ courts in both the U.S. and U.K. have been anything but harmonious in their interpretation of a key term. The basis for disagreement results primarily from the conscious choice of individual jurists to adhere to either American common law notions like “principal place of business” and the corporate “nerve center,” or the European, statute-based concept of third party perception of objective factors. Additional fragmentation may well occur going forward: one has to wonder, for example, whether U.K. courts will continue to look to EU law in light of last year's “Brexit.”

Regardless of the merits and drawbacks in the current approaches, the lack of agreement on defining COMI goes against the purposes of the Model Law. Achieving the uniformity consistent with the Model Law's aims will ultimately require action by the law's drafters, and by lawmakers in the U.S. and the U.K.

74. *In re British American Isle of Venice (BVI), Ltd.*, 441 B.R. 713, 720 (S.D. Fla. 2010).

75. *In re Millennium Global Emerging Credit Master Fund Limited*, 458 B.R. 63, 77 (S.D.N.Y. 2011).

76. *Millennium*, 458 B.R. at 77.

77. *Id.*

78. *Id.*

79. G.A. Res. 52/158, MODEL LAW, *supra* note 9, art. 28.