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Received: 27 October 2025 | Revised: 27 January 2026 | Accepted: 4 February 2026

DOI: 10.1002/iir.70028

RESEARCH ARTICLE

INSOL INTERNATIONAL WILEY

Insolvency-related foreign judgements in Nigeria: Contextualising English legal influence and comparative analysis of the UNCITRAL regime

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Abstract

The United Nations Commission on International Trade Law (UNCITRAL) has produced the most robust international insolvency regime applicable to countries around the world. The Model Law on Cross-Border Insolvency (1997) is widely accepted and already very popular among African countries. UNCITRAL adopted two other model laws: (1) the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018); and (2) the Model Law on Enterprise Group Insolvency (2019). Nigeria has neither adopted the Model Law on Cross-Border Insolvency (MLCBI) nor any other relevant international instrument despite the importance of cross-border insolvencies and their economic implications. The United Kingdom, even before Brexit, adopted a narrow approach to the MLCBI which poses challenges for former English colonies that may be inclined to the influence of English legal tradition and judicial influence. The Model Law on Recognition and Enforcement of Insolvency-Related Judgments (MLIJ) provides an opportunity to identify and analyse issues that the Nigerian legislator should consider in

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exploring options to facilitate the recognition and enforcement of obligations arising from insolvency-related judgements. This article provides an analytical overview of the legal regime and delimits the scope of existing frameworks. There is a comparative assessment of whether any interpretive scope for comity exists in the applicable regime, considering the MLIJ's aim of promoting comity and cooperation between jurisdictions. The article examines how relevant UNCITRAL jurisprudence can support legislative development—including how the legislator can manage comity challenges considering relevant tests under the MLIJ. Other countries in a similar position as Nigeria will benefit from the analysis and recommendations in this article.

1 | INTRODUCTION

There is a rising wave of insolvencies globally, including companies that were shielded during the Covid-19 pandemic.[1] The existence of many multinational companies, population and general investment activities underscore Nigeria's relevance in global insolvency.[2] The absence of a legislative framework has resulted in stunted development regarding the promotion of insolvency-related obligations.[3] This deficiency has caused 'inefficiency and costly outcomes'.[4] In the context of foreign judgements, there is hardly any systematic assessment of how to promote cross-border insolvency obligations although there is broad consensus among legal practitioners regarding the need for a Nigerian framework for the circulation of such foreign obligations.[5]

The UNCITRAL Model Law on Cross-Border Insolvency 1997 (MLCBI), popular in Africa and widely adopted in various continents, highlights how certain approaches tend to be adopted where there are no specific statutory laws or treaties concerning cross-border insolvency.[6] Such approaches include comity (generally relevant to common law jurisdictions—essentially connoting a 'spirit of cooperation' between domestic and foreign courts),[7] exequatur (civil law), legislation regarding foreign judgements enforcement and techniques such as employing letters rogatory for transmitting requests for judicial assistance.[8] Proceeding on the basis that 'approaches based purely on the doctrine of comity or exequatur do not provide the same degree of predictability and reliability as can be provided by specific legislation',[9] the MLCBI is anchored on a dichotomised categorisation between comity and non-comity driven approaches to insolvency-related foreign judgements. The MLCBI accommodates jurisdictions governed by comity through its provisions on cooperation with foreign courts and foreign representatives.[10] Such jurisdictions could consolidate and adapt comity as cases arise.[11] The MLCBI also accommodates jurisdictions where cross-border insolvency is not governed by comity but rather international agreements or reciprocity.[12] In short, the provisions empower the courts to be flexible and exercise discretion in cooperating with foreign courts or foreign representatives. For example, foreign proceedings could be recognised liberally.[13]

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The UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgements 2018 (MLIJ), specifically providing for foreign judgements enforcement unlike the MLCBI, states that one of its purposes is 'to promote comity and cooperation between jurisdictions regarding insolvency-related judgments'.[14] This is the only reference to comity in both the MLIJ and its Guide to Enactment.[15] Another purpose provided in Art 1(a) of the MLIJ is 'to create greater certainty in regard to rights and remedies for recognition and enforcement of insolvency-related judgments'. These two purposes do not necessarily seem compatible, especially when there is no cross-reference to both instruments. Before the MLIJ was adopted, some delegates queried the reference to comity in the preamble and suggested that it should be deleted to promote legal obligation beyond discretion.[16] For some countries such as Nigeria, how exactly comity may be construed and delimited is significant regarding foreign judgements.

Nigeria needs greater legal certainty, but Nigerian courts have not found support in comity regarding the recognition and enforcement of foreign judgements. This was the case shortly after independence,[17] as well as many decades later when it had a substantial body of case law and jurisprudence on which it could draw.[18] In the former case, the Nigerian Supreme Court echoed the view that comity had been 'supplanted by ... the doctrine of obligation' within a common law analytical context.[19] Self-evidently, though, the statutory regime introduced a framework driven by reciprocity.[20] In the latter case, the Nigerian Supreme Court highlighted reciprocity as the basis on which Nigerian courts would enforce foreign judgements. There are clear implications depending on how comity is considered in enforcing insolvency judgements as the application of comity could be negative.[21]

This article, comparing UNCITRAL frameworks and English law, therefore asks what approach would best promote the recognition and enforcement of insolvency-related judgements (IRJs) in Nigeria. The question offers a unique perspective to relevant literature as there is no domestic or international legal framework for the recognition and enforcement of IRJs in Nigeria. Nigeria has not adopted any international instrument or treaty in this regard, despite the growing importance of insolvencies that concern Nigeria. In the absence of literature or guidance on how Nigeria can adopt and implement the MLIJ, this article fills the gap considering comparative analysis of the MLCBI thereby providing an important scholarly contribution regarding IRJs.

The next section, Section 2, analyses any interpretive scope for comity and reciprocity in the applicable regime based on comparative research. Building on this, Section 3 provides an analytical overview of the legal regime and delimits the scope of existing frameworks. Section 4 examines how relevant UNCITRAL jurisprudence can support legislative development—including how the legislator can manage comity challenges in Section 5 considering relevant MLIJ tests. Section 6 builds on such tests to promote an accommodating approach and the article then draws on UNCITRAL jurisprudence in Section 7. Section 8 concludes with a tripartite set of alternative suggestions to approaching comity which plays a key role in the UNCITRAL regime on insolvency.

2 | THE CONTEXTUAL FRAMEWORK OF COMITY AND RECIPROCITY

Comity (essentially politeness)[22] and reciprocity (essentially quid pro quo)[23] have apparent overlaps—'this [comity] theory is often regarded as requiring the application of reciprocity'.[24]

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Some scholars may go as far as to argue that 'the international theory (comity) finds the nature of the subject in the notion of international goodwill or reciprocity'.[25] This article, however, proceeds on the basis that comity and reciprocity are significantly different. The notion of reciprocity is also understood and applied differently across various jurisdictions depending on contextual evolution. For example, in the leading 19th century case, the US Supreme Court predicated comity on reciprocity (although it did not support 'any theory of retaliation').[26] However, it was argued that comity is not a form of reciprocity,[27] as clarified in 20th century US case law.[28] It is, therefore, critical first to provide an understanding of comity and its application to this article. Thereafter, reciprocity will be considered.

2.1 | Comity

Generally, comity connotes courtesy and friendliness.[29] Attaching a precise meaning to comity is difficult because of its inherent vagueness.[30] The contribution of US jurisprudence to comity is important because that country is a leading and arguably successful proponent of comity. Despite the vast experience of the US in the use of comity, neither case law nor scholarship has provided exactitude as to meaning. The earliest and most detailed explanation of comity in the conflict of laws was provided in *Hiton v Guyot*:

> 'Comity' in the legal sense is neither a matter of obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws.[31]

However, agreeing on any clear or systematic guidance regarding comity has been elusive. This is not just in case law,[32] but also in scholarly literature even when there is a detailed consideration from the perspectives of prescriptive comity (the respect that States have for each other by limiting the effect of their laws),[33] adjudicatory comity (takes account of the impact of foreign laws on the forum courts by prescribing the jurisdiction of the domestic sovereign's courts),[34] or comity of the courts (essentially a tool of analysis which the forum courts use in determining whether to extend adjudicatory comity to a case).[35] Despite any conceptual imperfections of comity, it reflects the 'spirit of cooperation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other Sovereign States'.[36] Such cooperation is at the heart of the MLIJ as a core purpose is 'to promote comity and cooperation between jurisdictions regarding insolvency-related judgments'.[37] Thus, although Chapter 15 of the US Bankruptcy Code refers to 'comity' without any guidance, case law demonstrates how comity has been used to promote cross border obligations subject to public policy considerations.[38] Under US law concerning bankruptcy, comity is listed as one of the considerations for courts in determining whether to grant relief regarding the enforcement of any judgement against the debtor.[39] The Senate Report in this regard is insightful: 'Principles of international comity and respect for the judgments and laws of other nations suggest that the court be permitted to make the appropriate orders under all of the circumstances of the case, rather than being provided with inflexible rules'.[40]

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In this article, therefore, comity in the context of IRJs is about promoting the recognition or enforcement of such judgements by considering the need for international cooperation as a core purpose of the MLIJ. Such cooperation should therefore influence the court addressed to adopt a liberal attitude to IRJs considering the relief that can be granted under the UNCITRAL insolvency regime. The article does not suggest that comity should replace the theoretical basis for foreign judgements generally under the English common law. Also, the article does not necessarily go as far as to argue that comity should be the theoretical basis for enforcing such judgements in Nigeria.[41] In the latter case, this is because predicating successful Nigerian implementation of the MLIJ on the adoption of comity may delay jurisprudential progress except comity is expressly included in the relevant enacting law. In principle, comity (which the Nigerian Supreme Court did not recognise as such a theoretical basis)[42] may not be inimical to foreign judgements in Nigeria but progressive judicial discipline, underpinned by considerable conceptual clarity, is required and comity is therefore inadequate. Without addressing such issues, the application of comity (especially in an unsystematic manner) can complicate legal uncertainty and undermine predictability. However, comity should have a positive influence on promoting IRJs in Nigeria. This represents a *filtered approach to comity* regarding IRJs.

Comity is not the basis on which English courts 'recognise or give effect to foreign judgments'.[43] English courts have a long history of cooperating in insolvency matters,[44] but such cooperation was not extended to recognising or enforcing IRJs.[45] The UNCITRAL regime on insolvency concedes that there are 'States in which the proper legal basis for international cooperation in the area of cross-border insolvency is not the principle of comity'.[46] Even in such cases, however, the regime can support the development of 'international cooperation agreements'.[47] Viewed from this standpoint, comity need not be seen as an uncritical approach to recognition or enforcement of IRJs.[48] However, a genuine and liberal attitude to cooperation is key—subject to a narrow application of public policy.

2.2 | Reciprocity

Recipocity generally connotes a mutual exchange and is a key consideration in negotiation and application of treaties.[49] In *Rubin*, the majority of the UK Supreme Court considered the absence of the 'expectation of reciprocity on the part of foreign countries' as 'a reason for the limited scope of the *Dicey* Rule'.[50] Introducing 'new rules' for enforcing judgements should therefore depend on 'a degree of reciprocity'.[51] The minority opinion took a different approach as it did not think that its affirmative conclusion on the common law point ('whether the English court has jurisdiction ... to enforce an avoidance order made in foreign bankruptcy proceedings in circumstances where, under those rules, the foreign court has jurisdiction to entertain the bankruptcy proceedings themselves')[52] was undermined by the absence of reciprocity.[53] Apart from matrimonial proceedings, as the Court noted, reciprocity had not played any part in recognising and enforcing foreign judgements at common law.[54]

In any case, reciprocity 'presents a broad general idea rather than a definite concept'.[55] This lack of sophistication has resulted in different possible meanings of reciprocity regarding foreign judgements[56] such as 'jurisdictional reciprocity'.[57] This may be in part why reciprocity did not drive the recognition and enforcement of foreign judgements at common law, but this is not at the heart of this article. Also, the fact that international relations and State conduct are relevant to reciprocity at least in part arguably underpins the tendency for overlaps with comity

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since the latter is about respect for (other) States. The obligation theory is not predicated on such relationships.

The 'obligation theory' (which is essentially the idea that the claimant would have a judgement creating an obligation (or debt) if there were no violation of procedural fairness and the foreign court properly exercised jurisdiction) applies under the English common law.[58] The majority opinion in *Rubin* described the theory of obligation as a 'purely theoretical and historical basis for the enforcement of foreign judgments at common law', inapplicable to statutory regimes, and made no practical difference to the analysis that led to not recognising the order of the US Bankruptcy Court in the Isle of Man.[59]

The MLIJ does not mention reciprocity. The MLCBI is also not predicated on reciprocity. States that enact any of the MLCBI's provisions can invoke them in cases where such provisions are objectively applicable.[60] Although, as noted earlier, even for jurisdictions where reciprocity (rather than comity) is the legal basis for international cooperation regarding cross-border insolvency, Chapter IV of the MLCBI (on cooperation with foreign courts and foreign representatives')[61] can support the development of 'international cooperation agreements'.[62] Nigeria has yet to adopt either the MLIJ, MLCBI or the MLEGI. It is therefore necessary to examine whether or to what extent comity can be used to promote the recognition or enforcement of IRJs.

2.3 | The possible role of comity in IRJs

Nigerian courts have not adopted any deliberate or sophisticated approach to comity, perhaps because they have not seen any practical need to do so from a foreign judgement recognition and enforcement perspective.[63] The legal regime in this regard is driven by reciprocity although this does not answer the question of what would happen outside the reciprocal statutory regime.[64] The public international law perspective to comity in Nigeria has been expressed generally. For example, the Supreme Court noted that relevant statutes (concerning territorial waters, fisheries and the Exclusive Economic Zone) 'give municipal effect to international treaties entered into by virtue of its membership, as a sovereign State, of the Comity of Nations'.[65] This attachment to sovereignty has been identified as a core feature of comity in private international law.[66] But this characterisation may suggest an emphasis on State relations without any clarity on how such comity should be exercised and in whose favour.

Implied consent for a State to respect another state's territorial integrity arguably drives the development of many private international law rules.[67] In this sense comity is limited by the need for a State to assert fundamental principles of justice.[68] But the premise of territorial integrity will not take the discourse very far regarding what foreign obligations should be enforced generally. This is because the interests of the State and private legal persons such as companies may not necessarily align. Thus, the notion that fundamental principles of justice (such as enshrined in public policy) will resolve the issue is not guaranteed and may undermine legal certainty. The exception of public policy is usually used in a negative sense,[69] although it can be used positively.[70] Conversely, it may be argued, comity is typically applied in a positive manner, that is, to enforce obligations either in a public international law perspective (such as relevant treaties) or private international law perspective (such as enforcing obligations between private litigants across borders),[71] although it can also be used negatively.[72] Courts can find it difficult to navigate this area especially with the burden of colonial legacy. Overlooking such dynamics can result in the perception that comity is always the foundation for enforcing

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cross-border obligations.[73] Some countries may find that they are in international legal relations based on trust whether deliberate, implied or compelled. For example, under the 1922 Ordinance ('the 1922 Act') Nigeria is obliged to recognise and enforce judgements from certain countries designated by the British colonialists before independence.[74] Nigeria did not participate in that process of selecting relevant countries but, essentially, must trust the States from which relevant judgements emanate subject to specified jurisdictional bases and public policy. The underlying consideration is a reciprocal relationship, but that determination was made by the colonialists in favour 'any part of Her Majesty's Dominions outside the United Kingdom'.[75] Thus, there are two important consequences. First, there were no sovereignty safeguards against the UK and, second, the UK exercised the reciprocity mechanism for and on behalf of other colonial subjects.

Comity has clear international importance, but it should be approached more deliberately in a Nigerian context regarding cross-border obligations. Considering the deficiencies of traditional bases for recognising or enforcing foreign judgements, no such theoretical basis should be applied rigidly because no single basis ipso facto provides a definitive solution to practical challenges.[76] A relevant alternative is the use of *qualified obligation* which 'modifies the traditional theory of obligation as a basis for the recognition of foreign judgments' and 'is designed to avoid the pitfalls of ambiguity, excessive discretion, unpredictability, and uncertainty which characterise comity and reciprocity'.[77] Qualified obligation 'also involves a consideration of State interests and territorial sovereignty, thereby avoiding significant weaknesses of the doctrine of obligation'.[78] This approach which has found support in scholarly literature,[79] is compatible with international cooperation especially if such cooperation promotes the enforcement of obligations (including in the context of IRJs) across borders. The theory of obligation, in its pure form, is of limited value in Nigeria because courts usually use statutory regimes (rather than the common law) and may even do so when foreign judgements are outside the statutory scope.[80] Such judicial attitude has contributed to the prominence of reciprocity. A comparative analysis of jurisdictional scope regarding the relevant legal regimes will help to situate the main issues.

3 | THE SCOPE OF THE MODEL LAW AND STATUTORY FRAMEWORKS

Delimiting the legal regime's scope first requires a consideration of how 'foreign judgment' is defined in the MLIJ and Nigerian statutes. The MLIJ defines judgement as 'any decision, whatever it may be called, issued by a court or administrative authority, provided an administrative decision has the same effect as a court decision'.[81] Such a decision 'includes a decree or order, and a determination of costs and expenses' but excludes 'an interim measure of protection'.[82]

This MLIJ definition is wider than the Nigerian statutory regime governing the recognition and enforcement of foreign judgements. The main statute is the 1922 Act which has as its aim the facilitation of 'the reciprocal enforcement of judgments obtained in Nigeria and other parts of Her Majesty's Dominions and Territories under Her Majesty's Protection'.[83] These countries are generally those that would later form the Commonwealth.[84] The other statute, the Foreign Judgments Act of 1961 (the 1961 Act) is in force but essentially and practically irrelevant until the relevant minister extends its application to any country. Countries falling outside both frameworks would have recognition and enforcement proceedings commenced by an action on the judgement.[85] Nigerian courts have however struggled to maintain coherence in these

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categorisations, thus creating some legal uncertainty regarding scope. For example, the Nigerian Supreme Court enforced a judgement from Niger (a former French colony and a civil law jurisdiction) under the 1961 Act although no ministerial order had been made in favour of that country.[86] It was apparently a practical decision favouring the enforcement of decisions but also showing that Nigerian courts need to approach any judicial discretion more deliberately and in a more sophisticated manner.

Unlike the MLIJ under which a judgement 'includes a decree or order', the 1922 Act defines judgements as any judgement or order given by a court in civil proceedings under which a sum of money is payable.[87] It must be final and not subject to appeal.[88] This definition is too narrow for insolvency decisions that can go beyond definite sums of money. The 1961 Act is even clearer in its non-application as it excludes certain matters from the scope of actions *in personam* including bankruptcy and winding up of companies.[89] Since the statutory regime does not support IRJs, judgement creditors could in principle explore the common law. However, they would face similar challenges as would be faced in general foreign judgements issues, notably legal uncertainty and complexity. The complexity would be worse for IRJs because bringing an action on the judgement needs to factor in the substantive and procedural technicalities that underpin insolvency matters. There is also an extreme paucity of jurisprudence on common law enforcement as Nigerian courts have demonstrated a proclivity to extend the 1922 Act beyond its scope rather than to develop the jurisprudence on recognition and enforcement under the common law.[90] This is an important point because any argument that the common law should be used to enforce IRJs is unlikely to thrive. There is either a lack, or extreme paucity, of jurisprudential guidance for judges interested in taking that path.

The MLIJ further defines an 'insolvency-related judgment' as one that (a) 'arises as a consequence of or is materially associated with an insolvency proceeding, whether or not that insolvency proceeding has closed'; (b) 'was issued on or after the commencement of that insolvency proceeding'[91]; and 'does not include a judgment commencing an insolvency proceeding'.[92] The Hague Judgments Convention 2019 does not apply to 'insolvency, composition, resolution of financial institution, and analogous matters'.[93] The Explanatory Report notes that the Convention 'excludes judgments directly concerning insolvency'.[94] Foreign judgements will not be recognised under the Convention:

> [...] if the right or the obligation that was the legal basis of the action in the State of origin was based on rules pertaining specifically to insolvency proceedings, rather than general rules of civil or commercial law. If the action derives from insolvency rules, the exclusion precludes the judgment's circulation of the judgment under the Convention. But if the action derives from civil or commercial law, the judgment may circulate.[95]

In any case, it has been argued in the context of jurisdiction and centre of main interests (COMI) that the insolvency exclusion in the Hague Judgements Convention 2019 should be replicated in a new Hague Jurisdiction Convention.[96] This is so as relevant debates 'are best conducted in an UNCITRAL forum rather than in a Hague Conference on Private International Law context'.[97]

There are still some issues that courts may need to deal with regarding scope. One, commercial and insolvency categories. Two, judgements concerning the opening of insolvency proceedings. The MLIJ 'does not include a judgment commencing an insolvency proceeding'[98] and the Convention does not apply to judgements opening insolvency proceedings.[99] This may seem to

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suggest the inevitability of going outside both frameworks if a need to consider such judgements arose. Leaving this entirely to domestic dynamics would not work as well as an international framework especially considering limited efforts that countries have made to adopt the MLIJ. One way out of this impasse could be to adopt the MLCBI. This will mean that parties can benefit from the liberal interpretation of relief with the notable exception of the UK which adopted a very restricted approach to the MLCBI. Another way could be to adopt the MLIJ and urge Nigerian courts to draw on the international jurisprudence that has favoured a liberal interpretation of the MLCBI. Either approach would require a systematic and progressive approach to such international jurisprudence, akin to 'acquis' (essentially an acquired body of laws and framework of obligations)[100] not only well established under EU law[101] but also increasingly under the Hague Conference on Private International Law where 'there is already a serious deal of Hague acquis'.[102] There is fertile ground for UNCITRAL *acquis* to thrive in Nigeria.[103] This is because UNCITRAL has a pride of place in Nigeria considering international treaties from major international organisations in the context of international commercial dispute resolution.[104]

4 | FUNDAMENTALS OF SUPPORTIVE ACQUIS AND COMPARATIVE LIMITS

In drawing on such acquis, it is important to focus on how countries have favoured a liberal interpretation of relevant jurisprudence rather than a default recourse to approaches underpinned by jurisprudential relationships that are shaped by colonial heritage.[105] An archetypical example in this regard is a critical and tentative approach to English jurisprudence regarding UNCITRAL and international insolvency. In *Rubin v Eurofinance SA*,[106] a US judgement regarding fraudulent conveyances and transfers had been enforced against *Eurofinance SA* at common law. One key issue was whether the assistance provisions in the Cross-Border Insolvency Regulations 2006 (which implemented the MLCBI in the UK) could be a legislative basis for enforcement. The UK Supreme Court (UKSC) was not only divided[107] but also had to discount previous case law[108] in adopting a narrow approach to the MLCBI and that the US judgement could not be enforced in England. *Rubin* has been much criticised as being unduly restrictive (a point that the UKSC highlighted more than a decade later)[109] and not striking the right balance between (1) the need for the judgement debtor to have a chance to present arguments and (2) the concern that debtors may undermine creditors' interests by deliberately proceeding where judgements may be enforced.[110]

There are contrary views[111] and nuanced criticisms regarding the UKSC's restrictive approach considering that 'courts can maintain parochial authority while ostensibly protecting the home country against harassment by foreign courts that would seize citizens' assets without valid jurisdiction'.[112] Thus, the practically territorialist approach that the UKSC applied would impede the enforcement of obligations but arguably 'brought about a careful and meaningful articulation of an important legal perspective'.[113] One may have expected that comity, although clearly not a basis to recognise or enforce foreign judgements, would play a considerable role in the analysis and serve to promote a liberal attitude to recognising or enforcing IRJs.[114] But that posed a significant dilemma for the court.

To arrive at its restrictive approach in *Rubin*, the UKSC had to first discount comity albeit impliedly. This contradiction is missed in literature. The few references to comity were in quotations from other cases and in a positive sense.[115] In other words, the quotations indicate how

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comity could help to promote the enforcement of obligations through judicial assistance. But the court did not build on such positivity in all three places where it referred to case law on comity. Avoiding engagement with comity in a positive sense also aligned with a disengagement from other ways that may have offered or enhanced a liberal approach. A few years after *Rubin*, the Privy Council identified comity (alongside an orderly approach to the effective international recognition of obligations) as the basis of the public interest that underpins the principle of modified universalism.[116] This principle essentially concerns the promotion of orderly winding up of company affairs by competent courts globally.[117]

Thus, the *Rubin* court 'paid lip service to the principle [of modified universalism] as an underlying principle of international insolvency law, but effectively denuded the principle of much practical power'.[118] Additionally, 'the court seemed to foreclose the possibility of further judicial developments in this field, leaving the matter within the exclusive domain of the legislature and reciprocal arrangements with other countries'.[119] More than a decade after *Rubin*, the case has had limited influence on other jurisdictions demonstrating a willingness to chart a different path in favour of liberally interpreting the MLCBI to extend to foreign judgements. This is so even though the MLCBI did not explicitly provide for foreign insolvency orders and judgements. For example, the Singapore High Court observed that 'the holding in *Rubin* (*UKSC*) is not endorsed in Singapore',[120] although 'in granting recognition and enforcement of foreign judgments and orders, the Singapore court is not merely acting as a rubber stamp'.[121] The decision has received scholarly support.[122] Singaporean case law has further consolidated 'a liberal approach to the grant of appropriate relief' and benefitting from progressive comparative analysis with US case law.[123]

The Privy Council approved the dictum that comity may be 'overridden by the need to protect British national interests or prevent what it regards as a violation of the principles of customary international law'.[124] In such a case, 'the judicial or legislative policies of England and the foreign court are so at variance'.[125] This is a reasonably high bar. However, neither the Cross-Border Insolvency Regulations 2006 (through which the MLCBI took effect in the UK) nor the Explanatory Memorandum to the Regulations[126] refers to comity at all in its text. Both documents contain many references to cooperation and judicial assistance.[127] English cases on cross-border insolvency rarely refer to comity[128] and do not appear to rely on it.[129] This is an important observation because such cases do not even concern foreign judgements and they were decided by lower courts long after *Rubin*. It seems more likely that the courts would rather only indirectly consider comity if necessary. For example, where an anti-suit injunction issue arises—in which case that reference to comity helps to address the specific issue of anti-suit injunction.[130]

In principle, it would be helpful for Nigerian courts to consider English law for guidance regarding IRJs. Considering the arguments already canvassed so far, however, a relevant inquiry is to assess the extent to which further analysis can fill the gaps in Nigeria. This is especially so in the absence of comity serving self-evidently to influence any liberal approach to promoting IRJs (not as a theoretical basis for recognition or enforcement) from an English standpoint. This further analysis requires an examination of how IRJs may be recognised under the MLIJ.

5 | TESTS FOR RECOGNITION AND ENFORCEMENT UNDER THE MLIJ

The MLIJ does not explicitly or positively set out jurisdictional bases (e.g., residence, presence, submission etc.) on which courts should recognise and enforce foreign judgements. But Art

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14 of the MLIJ contains grounds on which courts may refuse recognition and enforcement. Two other provisions complement Art 14. First, courts can refuse recognition and enforcement if doing so 'would be manifestly contrary to the public policy, including the fundamental principles of procedural fairness'.[131] The court addressed can refuse to take any action under the Model Law if it contravenes its public policy. Second,[132] 'an insolvency-related judgment shall be recognized only if it has effect in the originating State and shall be enforced only if it is enforceable in the originating State'.[133]

It is necessary to examine Art 14 to extract the bases on which foreign judgements can be recognised and enforced. They will be expressed positively to facilitate clarity and understanding. The foreign court must have exercised jurisdiction on one of the following bases:

1. Explicit consent of the judgement debtor.[134]
2. Submission. This typically would be by arguing on the merits in the foreign court without objecting to jurisdiction within time (except such objection would have failed anyway) or by agreeing in advance.[135]
3. Where the court addressed would have exercised jurisdiction.[136]
4. One not incompatible with the law of the receiving State.[137]

But it would be considerably unhelpful to see these bases solely from the standpoint of bases on which courts can recognise and enforce. For the avoidance of any doubt the MLIJ expresses such bases just mentioned from the standpoint of refusal to recognise and enforce, just as all other grounds listed in Art 14. Doing so arguably sets the tone for a liberal scope to promote obligations.

Other grounds on which courts may refuse recognition and enforcement are: improper notification of proceedings[138]; obtaining judgement by fraud[139]; inconsistency with another judgement[140]; interference with the administration of the debtor's insolvency proceedings[141]; as well as where a judgement 'materially affects the rights of creditors generally such as determining whether a plan of reorganization or liquidation should be confirmed' and 'the interests of creditors and other interested persons, including the debtor, were not adequately protected in the proceedings in which the judgment was issued'.[142] This provision regarding the interests of the creditors and the debtor may at first blush seem to invite a review of the merits and therefore potentially relitigate at the court addressed. However, the focus here is on collective or broader interests that are directly affected by the judgement rather than just bilateral disputes between two parties.[143]

Under an optional provision, the court addressed may also refuse foreign judgements from States whose insolvency proceedings are or would not be enforceable under the receiving State.[144] Foreign judgements would escape this sphere of refusal if two conditions are satisfied. First, if insolvency representatives of proceedings that are or could have been recognised under the law of the receiving State[145] engaged in substantive merits of the cause of action concerning such proceedings.[146] Second, such judgements strictly concern assets that were in the originating State when the foreign proceedings were commenced.[147] The provision seems well suited to States that have already adopted the MLCBI or are considering its enactment.[148] Most countries that have already adopted the MLCBI may take their time to determine if or when they want to adopt the MLIJ. The UK is a notable exception as it has adopted a narrow approach to the MLIJ so that it does not extend to foreign judgements.[149] Therefore, there may be more urgency for such a country to benefit from the MLIJ. However, countries such as Nigeria that have yet to

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adopt or enact the MLCBI would benefit from adopting both instruments to ensure a generally comprehensive regime on cross-border insolvency.

Nigerian courts are likely to set off on familiar territory in dealing with IRJs. There are two layers of important consideration from a recognition and enforcement standpoint. The first concerns jurisdictional grounds for recognising and enforcing foreign judgements. Such grounds are largely predicated on the applicable legal framework. Since there is no specific legislative framework in this regard, courts will have to deal with the issue one way or another: *ubi jus ibi remedium*. They will have recourse to jurisdictional grounds with which they are familiar under received English common law[150] or the 1922 Act.[151] As earlier argued, the latter should be interpreted within its jurisdictional and reciprocal scope but lower courts who choose to stretch the 1922 Act to certain countries will find judicial-precedent support in a Nigerian Supreme Court judgement.[152] The second layer of consideration concerns what court will recognise and enforce IRJs in Nigeria. This second layer may come as a surprise to jurisdictions that do not have the relatively complex jurisdictional or judicial structure that exists in Nigeria.

5.1 | The effect of (internal) subject matter jurisdiction on foreign judgements

In Nigeria, courts need to hear matters which they are designated to hear; otherwise, they would lack jurisdiction since the subject matter falls outside the remit of their competence. Nigerian courts consider jurisdiction to be of fundamental importance to such an extent that it can be raised for the first time at the Supreme Court. They are however even more assertive of their jurisdiction in certain areas such as insolvency matters.[153] Under the Nigerian Constitution, judicial powers are stipulated and apportioned along federal and state lines—there are 36 states and the Federal Capital Territory.[154] There are sometimes overlaps and even conflicts as there are not always clear divides.[155] The Federal High Court is competent exclusively to deal with a list of matters, and any of the 36 State High Courts (and High Court of the Federal Capital Territory) lack jurisdiction to consider any such matters. This is so even though both courts are of coordinate jurisdiction.[156]

The Federal High Court (which is competent to deal with 'bankruptcy and insolvency' matters)[157] asserted its exclusive jurisdiction regarding a petition to wind up a Nigerian company,[158] despite the parties' agreement for any disputes to be governed by Israeli laws and heard solely by Israeli courts.[159] Nigerian case law provides some illustration of the complexities inherent in jurisdictional questions concerning subject matter and jurisdictional scope.

In *Weide & Co. (Nig.) Ltd. v Weide & Co. Hamburg*,[160] there was an appeal against the Federal High Court's ruling that dismissed the appellant's application seeking two things. Either the removal of the respondent's petition from the list of proceedings of the court or for the respondent to give security for the costs of proceedings since the alleged debt had always been disputed.[161] One ground for seeking a removal was that 'the petition was presented in bad faith and was an abuse of the process of the Court in that the alleged debt has always been in dispute'.[162] The respondent insisted on this ground and that 'the question of proving the debt claimed as the basis of the petition was not one of the grounds on which the appellant sought to restrain the respondent from taking any further steps on the amended petition'.[163] The Court of Appeal observed that the contention amounted to 'unnecessary hair splitting' and there was no 'substantial difference between the two positions in so far as the real issue before the court

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is concerned'.[164] The Court of Appeal unanimously allowed the appeal holding that the Federal High Court (FHC) had no jurisdiction to adjudicate.[165]

Two lessons can be drawn from *Weide & Co. Hamburg*. First, this point regarding absence of jurisdiction for the FHC is instructive because that incapacity was only from a substantive sense. As an insolvency matter, the FHC was the right court to approach but the Court of Appeal took the view there was no evidence that the debt was undisputed and therefore the FHC should have divested itself of jurisdiction in that substantive sense. This should therefore be distinguished from mere subject matter jurisdiction. The FHC was the right court to approach but there was no conclusive evidence of an undisputed debt. Thus, the case should have gone to the High Court (also a court of coordinate jurisdiction under Nigerian law).[166] The Nigerian court is unlikely to cede the subject matter jurisdiction even during enforcement.[167] This point is significant because enforcement has been tied to subject matter jurisdiction even regarding foreign judgements generally.[168] Therefore, there is no domestic/foreign dichotomy in this regard. Courts are unlikely to gloss over allegations that the debt was disputed. Subject matter jurisdictional issues are complicated by important procedural technicalities concerning foreign judgements.

5.2 | Internal jurisdiction and procedural technicalities

The MLIJ, like the MLCBI, 'seeks to establish certainty with respect to the outcome of the recognition and enforcement procedure'[169] and demonstrates an awareness of the need to consider the 'national court and procedural system'[170] in aligning with existing national law. Undue procedural technicalities can complicate the internal jurisdiction issues discussed above. *Bronwen Energy Trading Ltd v Crescent Africa (Ghana) Ltd* illustrates possible overlaps between jurisdictional and procedural technicalities.[171] The court observed that 'in order to be properly seised of a matter, a court must have both jurisdiction and competence'.[172] This includes applications concerning foreign judgements which will be fundamentally defective without procedural compliance.[173] A court may be competent from the standpoint of numbers and qualifications of the judges, subject matter jurisdiction and no impediment to the exercise of that jurisdiction; and the case is brought before the court initiated by 'due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction'.[174] Based on this complementarity, the court dismissed the appellant's application to set aside the registration of the Ghanaian judgement by Motion instead of Petition.[175] The Court of Appeal in *Bronwen Energy* took the same position as the Court of Appeal in *Mudasiru v Abdulahi* regarding similar issue where an application to set aside was by Motion rather than Petition.[176] That echoed the same position regarding a similar issue in *IFC v DSNL Offshore*.[177] If the Nigerian legislator decides to enact a statute regarding the enforcement of IRJs, that may present an opportunity to consider further flexibility regarding the procedural rules of court. However, subject matter jurisdiction is constitutional, and this would be a lot more difficult to deal with if at all seriously considered.

Subject matter jurisdiction and even procedural rules of court do not directly concern jurisdictional bases for recognition and enforcement. Clearly, however, not complying with such relevant legal provisions or procedural rules can easily frustrate enforcement of obligations. Some provisions of the MLIJ show an expectation that laws are meant to be obeyed. The Nigerian legislature will find this encouraging. Under the MLIJ, the court addressed may refuse recognition and enforcement if the foreign court did not exercise jurisdiction on a basis that the court addressed could have exercised jurisdiction.[178] Similarly, the court addressed may refuse

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recognition and enforcement if the foreign court exercised jurisdiction 'on a basis that was not compatible with the law of [the State of the court addressed]'.[179] There is possibly scope for the Nigerian court to question whether the debt was undisputed when it was brought before the foreign court. This is because the Nigerian (FHC) court would not have exercised jurisdiction in such a case.[180]

The second lesson that can be drawn from *Weide & Co. Hamburg* is more positive from the standpoint of foreign judgement creditors' interests. And this concerns the willingness of the courts to focus on substance rather than labels. Under Art 15(2) of the MLIJ, the court addressed can recognise and enforce IRJs which provide for relief that is not available under the enforcing State's law and such relief 'shall, to the extent possible, be adapted to relief that is equivalent to, but does not exceed, its effects under the law of the originating State'. Another provision is Art 14(g)(iv) under which the court addressed may refuse recognition and enforcement if the foreign court 'exercised jurisdiction on a basis that was not incompatible with the law of [the State of the court addressed]'. This provision affords the recognising court the scope to recognise and enforce foreign judgements 'even if the precise basis of jurisdiction would not be available in the receiving State, provided that exercise was not incompatible with the central tenets of procedural fairness in the receiving State'.[181] Art 14(g)(iv) is applicable 'to any additional grounds which, while not explicitly grounds upon which the receiving [Nigerian] court could have exercised jurisdiction, are nevertheless not incompatible with the law of the receiving [Nigerian] State'.[182] Therefore the Nigerian court would be empowered and encouraged to recognise and enforce judgements in which regard the foreign court exercised jurisdiction reasonably (including observing procedural fairness) even if the precise jurisdictional basis were unavailable in Nigeria.[183]

Thus, whilst this provision in Art 14(g)(iv) is similar to Art 14(g)(iii), there is an important difference in the breadth and impact. Art 14(g)(iii) is negative to the extent that the court addressed may refuse if the foreign court 'exercised jurisdiction on a basis on which a court [in the State of the court addressed] could have exercised jurisdiction' subject to specific and definite jurisdictional grounds permitted under the laws of the court addressed.[184]

In the present, Art 14(g)(iii) is a statutory mechanism through which jurisdictional bases already set out in statute can apply. Potentially, this provision also circumvents the dichotomous approach to the 1922 Act and the 1961 Act.[185] These spheres of application do not undermine a use of jurisdictional bases under common law (in addition to statute) as may be applicable although there is very limited input from the common law regarding the jurisprudence of foreign judgements enforcement. Nigerian courts should enforce applicable IRJs in a flexible manner. Under this Art 14(g)(iii), Nigeria can use any of its jurisdictional bases (as may be appropriate) to enforce foreign judgements. All relevant jurisdictional grounds in the present and in the future can be accommodated.

In the future, Art 14(g)(iii) also implies that Nigerian courts can rely on any change in Nigerian law to enforce a foreign judgement if that was already in place when jurisdiction was exercised in the originating State. Although regular review of laws is not a Nigerian legislative strength, the provision in Art 14(g)(iii) is a window through which any statute that expands jurisdictional scope can be used to ensure the promotion of foreign obligations. At first blush it may appear that this provision undermines legal certainty or predictability. However, the cut-off point (i.e., that a jurisdictional basis must have been in legal existence when the foreign court exercised jurisdiction) should address any concerns in this regard.

Unlike Art 14(g)(iii), however, Art 14(g)(iv) is positive because the court addressed can recognise and enforce foreign judgements on jurisdictional bases that do not exist under the

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receiving court's law in so far as there is no incompatibility with the law of the court addressed. This is a significant difference because receiving courts can look beyond labels which promotes the circulation of foreign judgements. An approach to recognition and enforcement based on the foregoing analysis of substantive provisions is a positive application of comity. Focusing on substance rather than mere labels is a way through which comity can promote the enforcement of obligations. However, a strategic implication of focusing on the substance, as now suggested, is that the need for referring to the label of 'comity' is rather unnecessary. Instead, there should be a focus on how the functioning of substantive provisions may promote the enforcement of obligations. It should come as no surprise that the English courts, notably the Supreme Court in *Rubin*, avoided any significant consideration of how comity may be included in the analysis regarding the enforcement of foreign obligations when they had to adopt a restrictive approach considering legislative framework. In principle, this approach has some logical appeal. Indeed, 'legislators may have found it expedient to steer clear of delicate questions of the proper reach of the legal rules which they are making, leaving it instead to the courts to fill in the banks by reference to principles which are easy to label but much harder to define'.[186]

The need to look beyond mere labels and to examine the substance of jurisdictional bases is underscored by the Hague Judgements Convention adopted a year after the MLIJ was adopted. The Convention reflects a relatively liberal approach in two major respects. First, the Convention introduced many bases for recognition and enforcement.[187] Second, the Convention does not blacklist any jurisdictional basis, and contracting States are at liberty to use any jurisdictional bases as may be agreed between countries.[188] These lessons mark a contrast with previous efforts at the Hague Conference which were far more prescriptive and restrictive. That approach did not prevent a failure of the Hague Judgements Project (1992–2001). The tide has turned in favour of innovative ways to focus on the substance rather than an undue emphasis of technicalities in a way that promotes foreign judgements. The MLIJ provides for how courts may refuse recognition and enforcement but deliberately avoids specific bases on which judgements can be recognised and enforced. This is because the bases on which judgements can be recognised and enforced are essentially not exhaustive. Thus, the MLIJ can easily accommodate the dynamics and evolution of commercial life.

6 | ENABLING THE EXPANSIVE USE OF THE MLIJ

An expansive use of the MLIJ does not mean an unprincipled approach to comity for jurisdictions that specifically find support in comity regarding the promotion of foreign obligations in cross-border insolvency cases. An unprincipled approach to comity can be problematic and to this extent, 'comity need not be, and probably should not be, understood in terms of flexibility'.[189] A helpful qualifier here is that comity should not be understood *solely* in terms of flexibility. Some discretion is necessary in properly exercising comity because comity itself is of generally imprecise content. It would be a contradiction in terms to build rigidity on a foundation of considerably imprecise content.

Under Art 10, there is significant flexibility that enables courts to deal with situations where the judgement debtor pursues an appeal in order to delay enforcement or frivolous appeals.[190] If the court decides to recognise and enforce the judgement (or even recognise the judgement but postpone enforcement) regardless of the review/appeal, the court can require security to ensure that judgement creditor is not prejudiced pending the outcome of the review.[191]

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Considering the UNCITRAL legal regime on insolvency in the round, it concedes that pure reliance on comity does not provide legal certainty and predictability in the manner that specific legislation would.[192] However, national statutory mechanisms that support coordinated administration of cross-border insolvency cases 'make it possible to adopt solutions that are sensible and in the interest of the creditors and the debtor'.[193] The full picture of the MLIJ shows that comity should promote recognition and enforcement of foreign judgements. At least two provisions of the Model Law are relevant here. The first concerns equivalent effect. Under Art 15(1) of the MLIJ, a foreign judgement 'shall be given the same effect it [has in the originating State] or [would have had if it had been issued by a court of this State]'. The State of the court addressed can choose either option. The first option/limb promotes uniformity as, in principle, the foreign judgement would have effect in all States.[194] The second option/limb affords the court addressed the opportunity to maintain 'equality, fairness and certainty as between domestic and foreign judgments'.[195] This is so considering the practical challenges that the court addressed may face in determining the precise effects that the foreign judgement should have under the law of the foreign State.[196]

The first option/limb requires comity as this focuses on international uniformity rather than purely domestic preference. The second option/limb also requires comity but to a lesser extent. This is because whilst factoring in international convenience, this option also focuses on a case-by-case basis to ensure that patent unfairness will not be allowed under the guise of adherence to undue technicalities. The second limb also does not necessarily contradict the overarching disposition of the Nigerian courts to be driven by reciprocity, *depending on how exactly such reciprocity is applied*. Such an application can give a foreign judgement the same effect it would have had if it had been issued by the court addressed. However, reciprocity should not be exercised in a way that defeats the overarching requirements of comity under the MLIJ.

If Nigeria as the State of the Court addressed must choose one limb, the second limb would be of more functional use because it affords Nigerian courts more scope to promote the enforcement of obligations. Furthermore, Art 15(2) provides that the court addressed can adapt reliefs not available under its State to equivalent reliefs in so far as the latter reliefs do not exceed the effects under the law of the originating State. Art 15(2) effectively covers similar grounds as the first limb of Art 15(1). Therefore, the second limb of Art 15(1) and Art 15(2) suffice from the standpoint of compatibility, coherence and effectiveness. Some other provisions (on cooperation and coordination between courts/insolvency representatives regarding hearings and the coordination of group insolvency proceedings) reinforce the scope for judicial flexibility and the management of various interests.[197] There are important innovative efforts such as asset tracing which must navigate State and private interests.[198]

Comity also requires a balancing of interests. As noted earlier, the MLIJ requires fairness considerations when courts consider applications for the recognition and enforcement of foreign judgements.[199] Fairness remains an important consideration at the stage of recognition and enforcement which the MLIJ has now reinforced. In exploring fairness, the Nigerian court will be involved in a balancing of interests, for example, not exceeding the effects of the judgement[200] or its enforceability in the originating State and flexibility in adapting to ensure meaningful relief.[201] This approach engages with the interests of States and individuals. Foreign judgements are products of State/government machinery since they emanate from courts; and enforcement of such obligations are in the interests of private or corporate persons. Such a balancing exercise is even more important in insolvency matters since public interest is implicated. There are policy issues regarding insolvency including the knock-on economic effects of insolvencies. The MLIJ, through its enablement of such a balancing exercise, promotes comity

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and cooperation between jurisdictions with respect to IRJs. Comity in the context of the MLIJ should be applied in a way that promotes the enforcement of obligations.

Therefore, State interests are not undermined. For example, by ensuring that the effects of the judgements are not exceeded under the laws of the originating State or ensuring that such foreign judgements are essentially compatible with judgements of the receiving State. The focus should be on how to promote enforcement through any adaptability possible under Nigerian law. Drawing on relevant UNCITRAL jurisprudence, Nigerian courts can navigate issues as they arise and benefit from best practices not just from guides to enactments or explanatory reports but also from comparative case law analysis.

7 | RELEVANT UNCITRAL ACQUIS AS A SPRINGBOARD

Nigeria should be able to use the MLCBI and the MLIJ as a springboard to determine what way forward for IRJs in Nigeria. Several Nigerian legal practitioners have called for the adoption of the MLCBI.[202] Considering that the MLIJ is coming nearly two decades after the MLCBI, countries can factor in how much reflection has gone into the MLIJ based on gaps that could be filled. A notable gap is the unclarity (which the UK has brought to the fore) as to whether relief under the MLCBI should apply to foreign judgements.[203] Countries that did not subscribe to such a restrictive approach would probably find that there is much less pressure to adopt the MLIJ. Specifically, there is no need to adopt Art X of the Model Law on recognising and enforcing foreign judgements,[204] as the UK plans,[205] if a liberal approach to the MLCBI means that foreign judgements are enforceable under the MLCBI.

As noted earlier, some jurisdictions have adopted a liberal interpretation of the MLCBI such that judgements can be subsumed under relief available. The MLIJ affords countries who maintain a narrow interpretation to the MLCBI a chance to benefit from the UNCITRAL model law regime on foreign judgements. Adopting the MLIJ or the MLCBI can be pragmatic although it would be ideal and practical for Nigeria to adopt both international instruments at once since Nigeria has yet to adopt either.

Nigeria can proactively adopt the MLIJ and combine it with the MLCBI; and allow the courts to apply relevant provisions as cases as appropriate. Any overlaps will then be resolved in favour of facilitating the enforcement of obligations in cross-border insolvency. Another approach could be to graft relevant provisions with any modifications (limited to promoting legal certainty) onto a relevant Nigerian statute concerning insolvency. A possible approach to such a Nigerian statute can take the nature of the Bankruptcy and Insolvency Bill 2016 (which did not materialise into statutory enactment). A lesson to be learnt from denying presidential assent (although the national legislature had passed the Bill) to the 2016 Bill concerns the risk of confusion regarding 'the corporate insolvency provisions of the Bill and existing provisions of winding up and insolvency under the Companies and Allied Matters Act'.[206] Nevertheless, that Bill would not have had any significant impact on cross-border insolvency if it had been enacted into law.[207] This is especially so from the standpoint of enforcing obligations in any way that promotes legal certainty and predictability. However, scrutinising the reason for denial of presidential assent to the 2016 Bill is important because there is already a risk of confusion regarding substance and procedure from the standpoint of jurisdiction/competence. It is important to avoid compounding such possible confusion through a maze of statutory loops in Nigeria.

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Currently, Nigerian courts can adopt a rather restrictive or illiberal approach to on foreign judgements even if that may lead to a fraudulent escape of obligations.[208] In other words, it is necessary to develop a basis for a liberal approach to judicial cooperation that may promote the enforcement of obligations in cases of cross-border insolvency. The UNCITRAL Model Law insolvency regime discloses two overarching points. First, an approach that favours recognition and enforcement. Second, a great deal of cooperation (especially the MLCBI). Third, respect for countries/jurisdictions through flexibility.[209] The drive for flexibility in favour of recognition and enforcement of IRJs should extend to the possibility of setting aside such judgements as may be necessary.

The Guide further underscores flexibility: 'If the judgment is subsequently set aside or amended or ceases to become effective or enforceable in the originating State, the receiving State should rescind or amend any recognition or enforcement granted in accordance with relevant procedures established under domestic law'.[210] As the UNCITRAL Model Law regime has ceded such issues to national law, there is a risk that Nigerian law may follow, by default, the rather entrenched attitude to procedure and subject matter jurisdiction regarding foreign judgements. The procedural aspect of jurisdiction should align with the flexibility and efficiency that the MLIJ requires. Achieving flexibility and efficiency in this regard can be attained through (a) considering the internationality of IRJs and (b) therefore creating a different procedure for the enforcement and setting aside of such judgements.

Evidence for that difference or unique characterisation can be seen in the exclusion of foreign insolvency judgements from the scope of the Hague Judgements Convention. Other reasons that can justify a special status for such judgements are the absence of specific legislative frameworks, rigidity of the English common law towards IRJs, and the policy aspects of such judgements vis-à-vis governmental/regulatory interests. Furthermore, the MLIJ focuses on a 'simple, expeditious structure'[211] regarding the procedure for recognition and enforcement.[212] Such simplicity and speed directly concern documents required such as the certified true copies of IRJs and any documents needed to prove that the IRJ is effective and enforceable as may be necessary.[213] Nevertheless, procedural simplicity reinforces the flexibility of the MLIJ regarding substantive law as the court addressed can rely on 'any other evidence' that it finds acceptable if certified true copies and other such documents concerning proof are not available.[214]

8 | CONCLUSION

The MLIJ reflects a philosophy that favours the recognition and enforcement of foreign insolvency-related judgements. Countries that adopt the MLIJ are more likely to enforce such judgements than countries that do not adopt it. Such philosophical underpinning is critical. Judicial cooperation should be encouraged of course, but there is a real possibility Nigerian courts would be reluctant to do so without any enabling statutory framework. Nigeria will benefit from adopting the MLIJ, the MLCBI or both without any condition of reciprocity.

Traditional English legal influence on Nigerian law generally is of very limited help regarding the development of means to promote cross-border obligations through foreign judgements. First, the English courts have been reticent towards any cross-border approach based on comity.[215] Second, they have forbidden any judicial innovation in this regard.[216] Third, the UK Supreme Court rightly rejected the application of legislation which did not apply.[217] Fourth, the Cross-Border Insolvency Regulations 2006 ('the CBIR', giving effect to the MLCBI) do not contain any requirement for reciprocity. As the UK Supreme Court observed, '[the CBIR] apply to insolvency proceedings in any country irrespective of whether that country has adopted the Model Law or would otherwise recognise or assist insolvency proceedings in England'.[218]

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Reciprocity is not the ideal basis to facilitate the enforcement of foreign obligations, but the reality is that Nigerian jurisprudence on foreign judgements and obligations generally favours reciprocity. Thus, the reticence towards comity regarding IRJs, non-application of reciprocity in the MLCBI context, as well as a generally restrictive English approach to the MLCBI (in the context of foreign judgements) effectively relegate English legal inspiration on cross-border insolvency to the background. This article, therefore, provides a tripartite set of alternative suggestions to approaching comity as applicable to the UNCITRAL regime. First, the Nigerian legislator can expressly include comity in the law that enacts relevant Model Law provisions, but this will also require robust judicial discipline and concerted efforts to (further) sophisticate comity. Second, a *filtered approach to comity*. Since the Nigerian foreign judgements regime focuses on reciprocity and the MLIJ focuses on comity (although the MLCBI offers a model of cooperation for jurisdictions that apply reciprocity),[219] the Nigerian courts can consider a filtered approach to comity as applicable to the UNCITRAL regime. This involves a creative and flexible judicial attitude that should go beyond labels. Courts should be able to target the substance in a way that promotes the enforcement of obligations. The focus should be on adopting and implementing the Model Law regime on insolvency in a practical and progressive manner through international cooperation. Third, the courts can adopt a *qualified obligation* approach which is compatible with a *filtered approach to comity* but offers more certainty (which the MLIJ seeks) as the former is a paradigm shift in favour of essentially focusing on ways to enforce foreign obligations subject to a narrow application of public policy.[220] State interests and territorial integrity are also not discounted.[221]

There are, however, other areas in which regard English approaches to cross-border insolvency may be monitored. Generally, the English common law has had immense influence on legal development in Nigeria. Also, English jurisprudence is likely to evolve in a way that will be of wider global interest than before the UK left the European Union, including through its plans to partially implement the MLIJ and to lead in implementing the MLEGI.[222] As the English High Court observed, 'after Brexit the status of EU countries is that of foreign jurisdictions like any other' with the consequence that the relevant legal framework, notably, the CBIR 2006 needs to be followed.[223] Nigeria can track such developments but adopt a principled approach that promotes obligations. Mere labels should not impede the progress of Nigeria (or other countries in a similar position) regarding the UNCITRAL regime on insolvency.

CONFLICT OF INTEREST STATEMENT

The author declares no conflicts of interest.

DATA AVAILABILITY STATEMENT

Data sharing not applicable to this article as no datasets were generated or analysed during the current study.

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ENDNOTES

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business-insolvencies-forecasted-to-rise-this-year/>; Caroline Crosdale, 'Corporate Bankruptcies Are Rising Globally' (3 September 2024) < https://gfmag.com/capital-raising-corporate-finance/corporate-bankruptcies-rising-globally/>; This will remain high even if there are considerable adjustments to pre-pandemic levels considering factors such as geopolitical uncertainty. Allianz, 'The Wave of global insolvencies continues in 2025 and 2026' <https://www.allianz-trade.com/en_BE/news/latest-news/global-insolvency-report-march-2025.html > all accessed 11 October 2025.

[2] Anthony Idigbe, 'Insolvency Reform in Nigeria: INSOL 2018 African Round Table Peer to Peer Update' <https://punuka.com/wp-content/uploads/2019/10/Insolvency-Reform-Agenda-in-Nigeria-INSOL-ART-Peer-to-Peer-Update-BY-ANTHONY-IDIGBE.docx_1> (p 3) available on <https://punuka.com/insolvency-reform-in-nigeria-insol-2018-african-round-table-peer-to-peer-update/ > accessed 11 October 2025.

[3] Some legal practitioners noted 'one case where a request for judicial assistance was made by an English court to the Federal High Court of Nigeria. The request was declined by the Federal High Court on the basis that there was no enabling law to that effect'. Adewale Atake and Chidiebere Ejiofor 'Cross-Border Judicial Assistance Under Nigerian Law' (p 5) <https://www.templars-law.com/app/uploads/2019/11/Templars-Thought-Leadership-Cross-Border-Judicial-Assistance.pdf> accessed 11 October 2025.

[4] Peter Otaigbe, 'Navigating Cross-Border Insolvency in Nigeria: A Case for Reform and International Alignment in Nigeria's Insolvency Laws' (2025) 13 NIBLeJ 1, 2.

[5] On the unspecific and limited nature of the current regime, see Anthony Idigbe (n 2) 2. A similar challenge is found in conflict of laws literature. Some authors at least merely highlighted the need to enforce contracts and resolve insolvency. See Chibike Amucheazi, Chidebe Matthew Nwankwo and Fochi Nwodo, 'A reassessment of the challenges of enforcement of foreign judgments in Nigeria: the need for legislative reform to ease business' (2024) 20(2) JPIL 473, 474.

[6] Adopted in 62 States, nearly half are African: <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency> accessed 27 October 2025.

[7] In resolving cases where laws and interests of other sovereign States are affected. See *Societe Nationale Industrielle Aerospatiale v District Court*, 482, 543 U.S. 522 (1987). Cf *Hilton v Guyot* 159 US 113, 143 (1895).

[8] MLCBI Guide to Enactment para 7 <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf> accessed 11 October 2025.

[9] ibid. para 8.

[10] MLCBI arts 25–27 (ch IV). See also the MLCBI Guide to Enactment para 214.

[11] MLCBI Guide to Enactment para 214.

[12] ibid. para 215.

[13] ibid. paras 216–217.

[14] MLIJ art 1(d).

[15] MLIJ art 1(a).

[16] The Uruguayan delegation argued that 'in modern international law it is understood that foreign law is applied or foreign judgments are recognized, where appropriate, on the basis of a legal obligation rather than a discretionary act based on "comity" towards other states in the international community'. See para 3 of their submission of 4 May 2018: United Nations General Assembly: United Nations Commission on International Trade Law, 'Consideration of issues in the area of insolvency law: finalization and adoption of a model law on cross-border recognition and enforcement of insolvency-related judgments and its guide to enactment' Fifty-first session (22 May 2018) A/CN.9.956 <https://docs.un.org/en/A/CN.9/956> accessed 11 October 2025.

[17] *Alfred C Toepfer Inc v Edokpolor* (1965) NCLR 89.

[18] The Supreme Court observed that Nigeria did not recognise comity. See *Grosvernor Casinos Ltd v Halaoui* (2009) 10 NWLR (Pt 1149) 309, 339.

[19] *Edokpolor* (n 17) 1 where the Nigerian Supreme Court referred to Blackburn J. in *Schibsby v. Westenholz* (1870) L.R. 6 Q.B. 155, 159.

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[20] Discussed in the next section.

[21] Sabrina Lieberman, 'Clarity About Comity: How Courts Have Attempted Greater Guidance for Chapter 15 Litigants' (2022) 42(3) Northwestern Journal of International Law & Business 375, 388–395.

[22] Its etymology can be traced to *comitas*, its Latin roots. Thomas Schultz and Niccolò Ridi, 'Comity and International Courts and Tribunals' (2017) 50(3) Cornell International Law Journal 577, 581.

[23] Bruno Simma, 'Reciprocity' Max Planck Encyclopedia of Public International Law (MPEPIL 2008) para 4.

[24] Trevor C Hartley, *International Commercial Litigation: Text, Cases and Materials* (3rd edn, CUP 2020) 382.

[25] EB Crawford and JM Carruthers, *International Private Law: A Scots Perspective* (4th edn 2015) para 3-01.

[26] *Guyot* (n 7) 228.

[27] Adrian Briggs, 'The Principle of Comity in Private International Law' (Volume 1354) Recueil des cours de l'Académie de la Haye 1, 89. In support, see James Edelman and Madeleine Salinger, 'Comity in Private International Law and Fundamental Principles of Justice' in Andrew Dickinson, Edwin Peel, and Thomas Pausey, *A Conflict of Laws Companion* (OUP 2021) 325, 332.

[28] See *Johnston v. Compagnie Générale Transatlantique* 242 N.Y. 381, 387(1926). See also *Direction Der Disconto-Gesellschaft v. United States Steel Corp*. 300 F 741,747 (1925).

[29] James Paul George and Fred C Pederson, 'Conflict of Laws' (1986) 40 Southwestern Law Journal 401, 429–430.

[30] Francis Taylor Pigott, *Foreign Judgments: Their Effect in the English Courts* (Stevens and Sons 1879) 5.

[31] Guyot (n 7) 164.

[32] Regarding the 'comity of nations', Lord Shaw thought attempts to produce 'a set of rules of legal or binding effect' were 'very fruitless'. *Lecouturier v Rey* [1910] A.C. 262, 267.

[33] Donald Earl Childress III and Linda J Silberman, 'Prescriptive Comity: From Standards to Rules' (2024) 85 University of Pittsburgh Law Review 607, 633 (arguing that there is 'a continuing debate in private international law between the ways in which U.S. courts should evaluate questions of conflict between U.S. and foreign law').

[34] N Jansen Calamita, 'Rethinking Comity: Towards a Coherent Treatment of International Parallel Proceedings' (2006) 27(3) University of Pennsylvania Journal of International Economic Law 601, 605–608 (acknowledging the criticisms of comity but arguing that courts could benefit from principles of adjudicatory comity to deal with international parallel proceedings).

[35] Calamita ibid. 631 (arguing on the importance of keeping 'the concepts of adjudicatory comity and comity of the courts distinct').

[36] *Societe Nationale v District Court* 482 U.S. 543 (1987).

[37] MLIJ art 1(d).

[38] *Philadelphia Gear Corp. v Phladelphia Gear de Mexico*, 44 F.3d 187, 192 (3d Cir. 1994); In re Sivec SRL, 476 B.R. 310, 324 (E.D. Okla. 2012).

[39] 11 U.S.C.S § 304(c)(5).

[40] Senate Report No. 95-989 <https://www.govinfo.gov/content/pkg/USCODE-2001-title11/pdf/USCODE-2001-title11-chap3-subchapI-sec305.pdf> accessed 22 December 2025.

[41] In the case of Nigeria, this is not because comity (as a theoretical basis) is inimical to foreign judgements but because a lot of judicial discipline, underpinned by considerable conceptual clarity, is required and it is therefore inadequate. Otherwise, its application will complicate legal uncertainty and undermine predictability. However, comity should have a positive influence on promoting such judgements in Nigeria.

[42] *Halaoui* (n 18) 339.

[43] *Indyka v Indyka* [1969] 1A.C. 33, 58 [Lord Reid]; see also *Schibsby v Westenholz* (1870) L.R. 6 Q.B. 155, 159. See Lord Collins and Jonathan Harris (eds), *Dicey, Morris and Collins* on *The Conflict of Laws* (16th edn, Sweet & Maxwell 2022) para 14-094.

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[44] See *Credit Suisse Fides Trust v Cuoghi* [1998] QB 818, 827 [Millet LJ]. See *Rubin v Eurofinance SA* [2012] UKSC 46 paras 19, 21, 29, 51.

[45] The majority of the Supreme Court observed: 'It would be surprising if the Model Law was intended to deal with insolvency matters by implication'. *Rubin* ibid. para 143.

[46] MLCBI Guide to Enactment and Interpretation para 215.

[47] MLCBI Guide to Enactment and Interpretation para 215.

[48] See Lieberman (n 21) 395 (arguing that over a 5-year period, US courts 'mitigated the unpredictability of comity analyses by removing comity considerations from some threshold issues').

[49] On the significance of reciprocity at Hague Conference negotiations but why it would be burdensome in a non-treaty context, see Richard W Hubert, 'Some Thoughts on Judgments, Reciprocity, and the Seeming Paradox of International Commercial Arbitration' (2008) 29(3) University of Pennsylvania Journal of International Law 641, 646.

[50] *Rubin* (n 44) para 120. In this context, the Dicey Rule essentially refers to the situations in which English courts will recognise or enforce foreign judgements. The court referred to '*Dicey, Morris and Collins, Conflict of Laws*, 15th ed, 2012, para 14R-054'. This is Rule 14R-058 in the 16th edition: *Dicey, Morris and Collins* on *The Conflict of Laws* (n 43).

[51] ibid.

[52] ibid. 193 [Lord Clarke].

[53] ibid. 204 [Lord Clarke].

[54] ibid. para 127 [Lord Collins].

[55] Arthur Lenhoff, 'Reciprocity and the Law of Foreign Judgments: A Historical—Critical Analysis' 465.

[56] *Dicey, Morris and Collins* (n 43) para 14-092.

[57] The Nigerian Supreme Court highlighted this as not recognised in Nigerian law. See *Halaoui* (n 18) 339. On how 'jurisdictional reciprocity' can be confusing, see CSA Okoli and RF Oppong, *Private International Law in Nigeria* (Hart Publishing, 2020) 382.

[58] Essentially in the same way as contract. See Hartley (n 24) 382.

[59] *Rubin* (n 44) para 132.

[60] Fletcher rightly criticised the position of some jurisdictions that inserted a reciprocity requirement thus undermining this 'principle of "openness"'. Ian F Fletcher, *The Law of Insolvency* (5th edn, Sweet & Maxwell 2017) para 32-004.

[61] MLCBI arts 25, 26 and 27.

[62] MLCBI Guide to Enactment and Interpretation para 215.

[63] *Halaoui* (n 18).

[64] ibid.

[65] *Attorney-General of the Federation v Attorney-General of Abia State* SC28/2001. For a similar use of comity from a territorial integrity standpoint, see *Crédit Suisse Fides Trust v Cuoghi* [1998] QB 818, 827.

[66] Edelman and Salinger (n 27) 327.

[67] ibid. 355.

[68] ibid.

[69] Sparingly in a positive manner, but no less validly so. See Hartley (n 24) 587.

[70] For example, to 'insist on the application of forum law (or even foreign law)'. See Hartley (n 24) 587.

[71] For example, in 'giving extraterritorial effect to English internal public policy in cases involving illegal conduct where the contractual law is English'. See Richard Fentiman, *International Commercial Litigation* (2nd edn, *Oxford University Press* 2015) para 3.59; *Mackender v Feldia AG* [1967] 2 QB 590, 601.

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[72] For example, in 'denying enforcement to contracts injurious to a foreign government or its agencies'. See Fentiman (n 71) para 3.58; *De Wutz v Hendricks* (1824) 2 Bing 314.

[73] For the argument that 'comity precedes trust' at the 'international level', see Aygun Mammadzada, 'Multilateralism post-Brexit: do the Hague Conventions preserve the status quo of judicial cooperation?' (2024) Journal of Business Law 513, 533.

[74] Reciprocal Enforcement of Judgements 1922 Cap 175, LFN 1958.

[75] 1922 Act s 5(1).

[76] PR Beaumont and PE McEleavy (eds), *Anton's Private International Law* (W Green, 2011) para 9.10 (arguing that 'a single key to the identification of international competence is misconceived').

[77] Pontian N Okoli, *Promoting Foreign Judgements: Lessons in Legal Convergence from South Africa and Nigeria* (Wolters Kluwer 2019) 256–257.

[78] ibid. 257.

[79] Amucheazi et al. (n 5) 496 (arguing that qualified obligation is 'a better approach than the current lack of approach which leaves much to be desired'). See also Cosmas Emeziem, 'Untouchable Sovereign Debts: Towards a New Model of Transnational Justice and Global Finance' (2024) 52(2) Georgia Journal of International and Comparative Law 333, 402 (arguing, in support, that *qualified obligation* should be 'a basic foundation for reviewing sovereign debts in transitional justice situations').

[80] *Obasi v Mikson Establishment Industries Ltd* [2016] 16 NWLR (Pt 1539) 335. This is discussed in the next part of this article.

[81] MLIJ art 2(c).

[82] Such judgements have no direct operation under the English common law and cannot be used as a sword to pursue insolvency proceedings. See *Servis-Terminal LLC v Drelle* [2025] EWCA Civ 62 paras 38–41.

[83] Statutory object.

[84] Some member countries are not historically British colonies, for example, Rwanda and Mozambique: <https://thecommonwealth.org/our-member-countries> accessed 11 October 2025.

[85] 1961 Act s 3.

[86] *Obasi* (n 80) 335. By contrast, the Nigerian Supreme Court had earlier decided that the 1922 Act should be applicable. See, for example, *Macaulay v R.Z.B. of Austria* [2007] 18 NWLR (Pt 1062) 282, 296.

[87] 1922 Act s 2(1). Cf. MLIJ art 2(c).

[88] ibid. s 3(2)(e).

[89] 1961 Act s 2(2).

[90] See *Obasi* (n 80).

[91] MLIJ art 2(d)(i).

[92] MLIJ art 2(d)(ii).

[93] Hague Judgements Convention art 2(1)(e).

[94] Cf Hartley/Dogauchi Report para. 57. Also referred to in the fn to para 51 of the Explanatory Report.

[95] Explanatory Report para 51.

[96] Gerard MacCormack, 'Conflicts in insolvency jurisdiction' (2023) 19(2) Journal of Private International Law 186, 209. It remains to be seen whether the envisaged Convention will materialise.

[97] ibid.

[98] MLIJ para 2(d)(ii).

[99] Explanatory Notes para 51.

[100] On the etymology and origins of 'acquis commuautaire' regarding EU law and obligations, see Vaughne Miller, 'The EU's *Acquis Commuautaire*' SN/1A/5944 (International Affairs and Defence Section, House of

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Commons Library) 1, 2 <https://researchbriefings.files.parliament.uk/documents/SN05944/SN05944.pdf> accessed 11 October 2025.

[101] See generally, Luz M Martínez Velencoso, 'The Impact of Harmonized European Private Law and the Acquis Communautaire on Spanish Law' (2018) 11(1) Journal of Civil Law Studies 151.

[102] In this context it was even argued that a Hague Conference court may be established eventually, and relevant questions may be referred to such a court. See Mammadzada (n 73) 531–532.

[103] Materials on the Model Law on Enterprise Group Insolvency (MLEGI) are also part of the combined framework on cross-border insolvency. Neither the MLEGI nor its Guide to enactment mentions 'comity' but the 2005 Guide focused more on substantive cooperation by whatever term used. Thus, it seems less important whether States relied on reciprocity rather than comity. See paras 176–178 of the 2005 Guide <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> The UNCITRAL regime on cross-border insolvency generally underscores this approach to cooperation (vis-à-vis comity). See paras 176–178 of the 2005 Guide <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf> both accessed 11 October 2025.

[104] Nigeria was the first country to ratify the United Nations Convention on International Settlement Agreements Resulting from Mediation 2018 on 27/11/23. As of 9 August 2025, some major players in international commercial transactions such as the UK and the US have yet to ratify despite the relatively fast rate of ratification across different legal cultures and continents. On Nigeria's visibility, see generally, Shahla Ali and Erick Komolo, 'UNCITRAL's Engagement in African and Latin American Dispute Resolution Reform' (2020) 35(3) Ohio State Journal on Dispute Resolution 289, 292, 297, 299, 301–302.

[105] On the insufficiency of mere legal and colonial origins in shaping progress regarding insolvency, see Otaigbe (n 4) 16.

[106] [2012] UKSC 46.

[107] Lord Clarke dissenting, paras 191–205.

[108] Notably *Cambridge Gas Transportation Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc* [2006] UKPC 26. The SC determined that the case as 'wrongly decided'. See *Rubin* (n 44) para 132 [Lord Collins].

[109] *Kireeva v Bedzhamov* [2024] UKSC 39 para 106. The Supreme Court observed that 'the majority decision in *Rubin* attracted a good deal of international academic criticism'. However, there was in principle no undesirability about such judgements being recognised and enforced or to be hostile to cooperation in insolvency cases. The main point, which the court reiterated, was that any expansion for IRJs had to be through statutory intervention.

[110] Kah-Wai Tan, 'All that glitters is not gold? Deconstructing Rubin v Eurofinance SA and its Impact on the recognition and enforcement of foreign insolvency at common law' (2020) 16(3) Journal of Private International Law 465, 492.

[111] For example, Look Chan Ho, Recognition born of fiction—Rubin v Eurofinance SA (2010) 25(12) Journal of International Banking Law and Regulation 579, 587 (arguing that 'the Supreme Court must not allow the basis for enforcing foreign insolvency judgments to be floated on magic carpet of fiction').

[112] Tristan G Axelrod, 'UK Supreme Court Highlights Parochial Roadblocks to Cooperative Cross-Border Insolvency in *Rubin v Eurofinance SA*' (2014) 31(4) Wisconsin International Law Journal 818, 853.

[113] ibid.

[114] Indeed, Axelrod characterised the overarching discourse as [what should have been] 'to accept a distinct new policy of comity in bankruptcy jurisprudence or take a leap backwards into Model Law territorialism'. ibid. 832. In the context of recognising foreign main proceeding and respecting the decisions of courts opening main proceedings, it was argued that 'the court is in the ordinary way likely to accord such recognition as a matter of course both in furtherance of the purposes of the Model Law and as a matter of international comity'. See Kristin Van Zweiten (ed) *Goode on Principles of Corporate Insolvency Law* (5th edn, Sweet & Maxwell 2018) paras 16–34.

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[115] *Galbraith v Grimshaw* [1910] AC 508; quoted in para 12 of *Rubin*; *Credit Suisse Fides Trust v Cuoghi* [1998] QB 818, 827 quoted in *Rubin* (n 44) para 30; and references to *Hughes v Hannover* [1997] 1 BCLC 497, 517–518 (CA) and *England v Smith* [2001] Ch 417, 437 (CA) on how public policy and comity favours 'the giving of assistance' in the context of a letter of request—*Rubin* (n 44) para 151. For a similar reference to a positive use, see a UK Supreme Court case concerning cross-border insolvency: *Bedzhamov* (n 109) para 40.

[116] *Singularis Holdings v PriceWaterhouseCoopers* [2012] AC 1675 This was also quoted in *Wwrt Limited v Tyshchenko* [2021] EWHC 939 (ch) para 54.

[117] Modified universalism 'is founded on the public interest in the ability of foreign courts exercising insolvency jurisdiction in the place of the company's incorporation to conduct an orderly winding up of its affairs on a worldwide basis, notwithstanding the territorial limits of their jurisdiction'. See *Singularis Holdings* and *Wwrt Limited* ibid. It was argued that, after *Rubin*, other forms of assistance not involving the enforcement of a money judgment per se may continue to be provided to a foreign representative whose standing to seek such assistance can be established either under the Cross-Border Insolvency Regulations, or s.426 of the Insolvency Act 1986, or under the long-established principles of assistance available at common law. See Fletcher (n 60) para 32-038. Regarding assistance under the Insolvency Act, see Gerard McCormack, 'Insolvency assistance outside the Model Law: Section 426 of the UK Insolvency Act 1986' (2025) 34(1) International Insolvency Review 31.

[118] Gerard McCormack, 'US Exceptionalism and UK Localism? Cross-Border Insolvency Law in Comparative Perspective' (2016) 36(1) Legal Studies 136, 141 (particularly at fn 26).

[119] ibid.

[120] See the decision of the Singapore High Court in Re Tantleff, Alan [2022] SGHC 147 para 78.

[121] ibid. para 81.

[122] Wai Yee Wan, 'Re Tantleff, Alan' [2022] SGHC 147 [case comment] (2023) 32(1) International Insolvency Review 176, 179.

[123] *Re Terraform Labs Pte Ltd* [2025] SGHC(I) 4 para 77.

[124] See the approval of Hoffman J's observation in *Barclays Bank v Homan* [1993] BCLC 680 and application in *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41 para 42.

[125] ibid.

[126] Explanatory Memorandum to the Cross-Border Insolvency Regulations 2006 No. 1030.

[127] CBIR on cooperation with foreign courts and foreign representatives ch 4; Explanatory Memorandum paras 2.1 and 7.17.

[128] Many cases, none of which refers to comity, specifically concern reliefs sought under the MLCBI either squarely or at earlier stages/proceedings: *Farfetch Ltd (In Liquidation), Re* [2024] EWHC 3340 (Ch); *Arboit v Hung* [2024] EWHC 3399 (Ch); *Almeqham v Al-Sanea* [2025] EWHC 322 (Ch); Mitchell v Al Jaber [2024] EWCA Civ 423; *Almuhairi, Re* [2024] EWHC 535 (Ch); *Cimolai SpA, Re* [2023] EWHC 923 (Ch); *Allen v Derev* [2023] EWHC 387 (Ch); *Despins v Kwok* [2023] EWHC 74 (Ch); *Astora Women's Health LLC, Re* [2022] EWHC 2412 (Ch); *Kenneth v Chung* [2021] EWHC 3346 (Ch); *PJSC Bank Finance and Credit (in Liquidation), Re* [2021] EWHC 1100 (Ch).

[129] In *Vesnin v Queeld Ventures Limited, Mispare Limited* [2025] EWHC 104 (Ch) para 55, the English High Court quoted some authors on cross-border insolvency who specifically considered and rejected comity as a basis or criterion for recognition. The book in question is *Richard Sheldon QC (ed), Cross-Border Insolvency* (4th edn Bloomsbury 2015) para 9.2. The court recognised the Russian bankruptcy order although it observed that Russia had not adopted the UNCITRAL Model Law on Cross-Border Insolvency—see para 63.

[130] *Bourlakova v Bourlakov* [2024] EWHC 929 (Ch) paras 41 and 44.

[131] MLIJ art 7.

[132] ibid. art 7.

[133] ibid. art 9.

[134] ibid. art 14(g)(i).

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[135] ibid. art 14(g)(ii).

[136] ibid. art 14(g)(iii).

[137] ibid. art 14(g)(iv).

[138] ibid. art 14(a).

[139] ibid. art 14(b).

[140] ibid. art 14(c) and (d).

[141] ibid. art 14(e).

[142] ibid art 14(f)(i) and (ii).

[143] MLIJ Guide para 109.

[144] MLIJ art 14(h).

[145] That gave effect to the MLCBI. Art 14(h) of the MLIJ provides: 'The judgment originates from a State whose insolvency proceeding is not or would not be recognizable under [*insert a reference to the law of the enacting State giving effect to to the UNCITRAL Model Law on Cross-Border Insolvency*]', subject to two exceptions.

[146] MLIJ art 14(h)(i).

[147] ibid. art 14(h)(ii).

[148] Although States that have not enacted the MLCBI or do not plan to do so can adopt the approach of Art 14(h).

[149] *Rubin* (n 44).

[150] This will at least include the major bases stated in *Rubin*: presence and submission. The court also noted that 'if the person against whom the judgment was given was claimant, or counterclaimed, in the proceedings in the foreign court'. See *Rubin* (n 44) para 7. Generally, it bears emphasising that Nigerian law does not automatically change according to changes in the English common law, regardless of how progressive the latter may appear.

[151] In the main, the judgement debtor in the jurisdiction of the foreign court may have been carrying on business, ordinarily resident or submitted. See s 3(2)(b)(c) of the 1922 Act. Also, foreign judgements cannot be registered if it was 'in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court'. See s 3(2)(f) in this regard and s 3(2) generally. For the complexities surrounding a 'just and convenient' determination considering 'all the circumstances of the case', see *IFC v DSNL Offshore Limited* [2008] 9NWLR (Pt 1093) 606, 637 (CA).

[152] See *Obasi* (n 80).

[153] Companies and Allied Matters Act (CAMA) 2020s 570; see also Section 868 on definition of 'company' and Nigerian company.

[154] Constitution of the Federal Republic of Nigeria, s 255(1) and 270(1).

[155] J Akande, 'The Legal Order and the Administration of Federal and State Courts' (1991) 21 Publious: The Journal of Federalism 61.

[156] The coordinate jurisdiction precedes the current Nigerian Constitution. See OT Uwaka, *Due Process in Nigeria's Administrative Law System—History, Current Status and Future* (Lanham 1997) 93.

[157] See s 251(1)(j) of the Nigerian Constitution 1999.

[158] Previous CAMA s 408; now s 571 CAMA 2020. Companies Winding Up Rules 1991 and Insolvency Regulations 2022.

[159] Suit No.: FHC/L/CP/540/2012 *RRSAT Global Communications Networks Limited v Daar Communications Plc.*

[160] [1992] 6NWLR 627.

[161] ibid. 633–634.

[162] ibid. 634.

[163] ibid. 638.

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[164] ibid. 638.

[165] ibid. 641.

[166] *Access Bank plc v Akingbola* Suit No. M/563/2013 delivered by the High Court of Lagos State on 18 February 2014.

[167] ibid.

[168] ibid.

[169] MLIJ Guide para 38.

[170] ibid. para 17.

[171] *Bronwen Energy Trading Ltd v Crescent Africa (Ghana) Ltd* (2018) LPELR-43796 (CA).

[172] ibid. 1, 14.

[173] ibid. 22–24.

[174] *Madukolu v Nkemdilim* (1962) 1 ALL NLR 587, 595.

[175] *Bronwen* (n 171) 15.

[176] ibid.

[177] (2008) 9 NWLR (Pt 1039) 606, 630; *Brownen* (n 175) 17–22.

[178] MLIJ art 14(g) (iii).

[179] MLIJ art 14(g) (iv).

[180] The MLIJ in the context of exercising jurisdiction uses 'basis' whilst the Guide to Enactment uses 'ground'. It may be asked whether the MLIJ has done so in a deliberate way that confirms its willingness to look beyond traditional jurisdictional grounds if the court addressed deems fit.

[181] MLIJ Guide para 115.

[182] MLIJ Guide para 115. The provision and expansion of many jurisdictional filters in the Hague Judgments Convention illustrates the need for such flexibility although the MLIJ goes further.

[183] MLIJ Guide para 115.

[184] MLIJ Guide para 115.

[185] Although these statutes have their geographical spheres of application, they show jurisdictional grounds upon which judgements may be recognised and enforced in Nigeria.

[186] Briggs (n 27) 87.

[187] Art 5(1)(a)–(m) of the 2019 Hague Judgments Convention contain bases for recognition and enforcement.

[188] This can be illustrated through Art 15 of the 2019 Judgments Convention, which 'does not prevent the recognition or enforcement of judgments under national law'.

[189] Briggs (n 27) 87.

[190] MLIJ Guide para 81.

[191] ibid.

[192] ibid. para 8.

[193] ibid. para 9.

[194] ibid. para 121.

[195] ibid.

[196] ibid.

[197] MLIJ arts 9, 10, 12, 16. There is a range of judicial flexibility internationally regarding cross-border issues. See UNCITRAL Working Group V (Insolvency Law). Sixty-sixth session 12–16 May 2025 'Asset tracing and recovery in insolvency proceedings' A/CN.9/WG.V/WP.201 (Part E, para 1–14) <https://docs.un.org/en/A/CN.9/WG.V/WP.201> accessed 27 October 2025.

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[198] United Nations Information Service Vienna, 'UNCITRAL adopts Toolkit and Background Notes on Asset Tracing and Recovery in Insolvency Proceedings' <https://unis.unvienna.org/unis/en/pressrels/2025/unisl381.html> accessed 27 October 2025.

[199] This is especially so if the court addressed adopts the second limb of art 15(1).

[200] Second limb of art 15(1) cf. art 9.

[201] Art 15(2).

[202] See the sources in notes 2–4.

[203] *Rubin* (n 44).

[204] Art X: 'Notwithstanding any prior interpretation to the contrary, the relief available under [art 21 of the MCBLI] includes recognition and enforcement of a judgment'. See also Guide to Enactment paras 126–127.

[205] Art X 'is intended to be added to the MLCBI [...] Implementing article X will provide a new route for foreign judgments to be recognised in the UK. We expect that it will set aside the ruling in Rubin v Eurofinance ...'. See The Insolvency Service, Consultation outcome: Implementation of two UNCITRAL Model Laws on Insolvency Consultation <https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency/implementation-of-two-uncitral-model-laws-on-insolvency-consultation> accessed 23 December 2025.

[206] 'Buhari rejects five bills, gives reasons' (Premium Times, January 17 2019) <https://www.premiumtimesng.com/news/headlines/306248-buhari-rejects-five-bills-gives-reasons.html?tztc=1> accessed 11 October 2025.

[207] This is the same for several local statutes. Cf Bankruptcy Act 1979. For an analysis of such statutes, see Olusola Joshua Olujobi, 'Combatting Insolvency and Business Recovery Problems in the Oil Industry: Proposal for Improvement in Nigeria's Insolvency and Bankruptcy Legal Framework' (2021) 7(2) Heliyon 1.

[208] Cf *Halaoui* (n 18).

[209] See MLIJ Guide paras 18, 107 and 1(d): Annex 1, Recital 5 GA Res 73/200 of 20/12/18 <https://docs.un.org/en/A/RES/73/200> accessed 11 October 2025.

[210] MLIJ Guide para 81.

[211] ibid. para 83.

[212] This concerns the documents required such as the certified true copies of IRJs and any documents needed to prove that the IRJ is valid.

[213] This includes information regarding any pending review. Art 11 (2)(b).

[214] MLIJ art 11(2)(c).

[215] Text to n 115.

[216] *Bedzhamov* (n 109) para 107. See also *Rubin* (n 44) para 129.

[217] *Bedzhamov* (n 109) para 108.

[218] If the insolvency proceeding 'satisfies certain conditions and subject to a public policy exception, the court is obliged to recognise it'. *Bedzhamov* (n 109) para 57.

[219] Note 10. cf. notes 103 and 127.

[220] Note 77.

[221] Note 78.

[222] Through Article X of the MLIJ and addressing the rule in Gibbs: *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métau* (1890) 25 Q.B.D 399; essentially that debt obligations governed by English law cannot be discharged by foreign insolvency proceedings except there is consent <https://www.gov.uk/government/consultations/implementation-of-two-uncitral-model-laws-on-insolvency/implementation-of-two-uncitral-model-laws-on-insolvency-consultation#:~:text=Background-,The%20Model%20Law%20on%20Recognition%20and%20Enforcement%20of%20Insolvency%2DRelated,harmonised%20procedure%20to%20complement%20and> accessed 11 October 2025.

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[223] *OOO Nevskoe v UAB Baltijos Saliu Industrinio Perdirbimo Centras (formerly UAB Alfagra)* [2023] EWHC 15 (KB).

How to cite this article: Okoli, P. N. (2026). Insolvency-related foreign judgements in Nigeria: Contextualising English legal influence and comparative analysis of the UNCITRAL regime. *International Insolvency Review*, 1–29. https://doi.org/10.1002/iir.70028

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