Revista de Științe Politice. Revue des Sciences Politiques • No. 90 • 2026: 250 – 262

ORIGINAL PAPER

The Impact of the Right of Access Principle on Determining the Applicable Law in Cross-Border Insolvency Proceedings: A Comparative Analytical Study

Muhammed Khariy Qsair [1)]

Abstract :
This research attempts to map the conceptual contours of the principle of right to access in cross-border insolvency cases and analyzes its functional connection with both the recognition of foreign proceedings as well as conflict of laws rules about these cases. The work seeks to present interpretative standards that harmonize the demands of international judicial aid and the guarantees of national sovereignty and parties in insolvency, without forgetting the legislative gap from which most national systems lack tools to regulate this relationship. The study used a three-level comparative analytical method, particularly a descriptive analytical approach for analyzing legislative and contractual texts, a comparative method that compared American, European, British and Singaporean systems as well as inductive critical methodology for international judicial precedents issued between 2006-2023. The research found that the principle of the right to access is not only limited to the procedural aspect but encompasses an objective functional consequences which establishes a presumption of jurisdiction of the law of state in which main proceeding were initiated (lex concursus), despite its rebuttable nature. The study showed that there is no full international consensus regarding the relationship between recognition and the determination of the applicable law, indicating a legislative gap. He also stated that the concept of Center of Main Interests (COMI) is still the main technical axis in this system, though it suffers from an ambiguity existing in its formulation and requires to be reassessed. The scholar has been calling for utilising the functional priority model, i.e. applying (lex concursus) law to core regulatory issues, keeping (lex situs) law for real rights and treating public order narrow as due exception not general rule.
Keywords***:*** *Cross-Border Insolvency, Right of Access, Conflict of Laws, Recognition of Foreign Judgments, UNCITRAL, Public Policy****.***

[1)] Assist Professor, PhD, University of Thi Qar, Faculty of Law. Professor of Private International Law for Graduate and undergraduate Studies. E-mail lawp1e20@utq.edu.iq. E-mail legalur@yahoo.com

The Impact of the Right of Access Principle on Determining the Applicable Law in Cross-Border Insolvency Proceedings: A Comparative Analytical Study

The research problem:

The law of cross-border bankruptcy has undergone important changes in the last decades, leading legislators, judges and legal scholars to reconsider established views within conflict of laws regarding the appropriate standard used to determine which law is relevant in a bankruptcy case with effects that reach beyond a national legal system. In this regard, access constitutes a first-degree procedural principle that encompasses foreign parties (creditors, debtors and some other representatives from foreign courts) who can satisfy their right of access to the courts and participate in judicial proceedings in states other than those where bankruptcy originated (Westbrook et al., 2023, p. 45).

This issue gains exceptional importance in light of the increasing frequency of international bankruptcies, as the assets, debts, and contractual relationships of debtors are spread across multiple countries, making the determination of the applicable law extremely complex. Does the exercise of the right of access affect the process of determining the applicable law? And can such a procedural principle restrict a substantive conflict rule related to determining international jurisdiction? These questions embody the fundamental research problem.

A segment of modern jurisprudence believes that granting access rights to foreign bankruptcy representatives directly impacts the issue of recognizing foreign bankruptcy proceedings and determining the center of main interests of the debtor as the most relied-upon connecting factor in contemporary legislation. Meanwhile, another segment views this right as merely a procedural mechanism that does not affect the substantive foundations of conflict of laws in bankruptcy (Omar, 2022, p. 112).

Research Objectives:

This research aims to achieve the following objectives:

1. Drawing the conceptual framework for the principle of access in cross-border bankruptcy proceedings and outlining its legislative and contractual textual foundations.
2. Analysis of the conflict of laws principles applied in determining the applicable law to international bankruptcy proceedings in light of international instruments and comparative national legislation.
3. Revealing the actual impact of the principle of access on the mechanisms for determining the center of main interests (COMI).
4. Review of relevant comparative case law and its evaluation in light of modern international standards.
5. Formulating a balanced approach that reconciles the requirements of the right to access and public order in international bankruptcy procedures.

Research Hypotheses:

The research is based on the following hypotheses :

Hypothesis One: The principle of access directly influences the determination of the applicable law to cross-border bankruptcy proceedings, particularly through its impact on the center of main interests (COMI) criterion.

The second hypothesis: The right of access establishes a standard of international procedural public order, limiting the authority of states to restrict the participation of foreign parties in their local bankruptcy proceedings.

Hypothesis Three: The unification of access rights rules at the international level contributes to enhancing the ability of the international bankruptcy system to coordinate and cooperate among different jurisdictions.

Reasons for choosing the topic

The reasons for choosing this topic stem from a series of scientific and practical considerations, the most prominent of which are the phenomenon of cross-border bankruptcies has become one of the most present legal issues in contemporary international practice following successive financial crises and the rise of the digital economy, in addition to the scarcity of Arab studies that address this issue through a comparative methodological analysis. Additionally, the principle of access rights, which was established by the UNCITRAL legislative model, has not been sufficiently scrutinized in terms of its impact on conflict of laws rules. Furthermore, recent judicial decisions—particularly those issued by American and European courts—have revealed precise practical issues that warrant study and evaluation.

Research Methodology:

Given the complexity of an issue that can be approached from different branches of law, this study employs comparative analysis as its most appropriate methodological tool. The first part uses textual analysis of texts from UNCITRAL, the European Insolvency Regulation and Chapter 15 of the U.S. Bankruptcy Code as well as comparisons between legislative and judicial experience from the United States, European Union, United Kingdom and Singapore. This research also draws on doctrinal analysis of the opinions expressed by public and comparative private international law scholars, examining leading judicial precedents that revolutionary the contemporary trends in these domains.

I. The Concept of Access Rights in Cross-Border Bankruptcy Proceedings

I.1.The conceptual foundation of the right to access.

Access Rights as one of the most used procedural rights in international law on cross-border insolvency. In this research, access means the right under law of foreign insolvency representatives and foreign creditors to approach directly in courts of foreign countries and partake in judicial proceedings relating to debentures bankruptcy without seeking any relevant previous authorization or going through complete recognition procedures (Wessels et al., 2022, p. 78).

The UNCITRAL Model Law on Cross-Border Insolvency (adopted 1997 and amended in 2022) has implemented the infrastructure for this right, devoting Articles 16–20 to it, specifying that the foreign insolvency representative is granted complete litigation capacity before national courts upon recognition of its foreign proceedings.

The committee emphasized in its interpretative commentary on these articles that the right of access constitutes the first pillar for achieving international cooperation in the field of insolvency and that depriving foreign insolvency representatives of this right hinders the achievement of justice for all creditors and stakeholders (UNCITRAL, 2023, p. 34).

The right of access in bankruptcy proceedings is characterized by essential features that distinguish it from the general right to litigate; it is, first, a conditional right that depends on the nature of the recognized foreign proceedings; second, a right restricted by the necessity of not violating the public order of the enforcing state; and third, a reciprocal right that, in principle, requires a cooperative relationship between the concerned judicial systems (McCormack, 2023, p. 156).

I.2 .The international legislative foundations for the right to access

There are numerous international instruments that have established the right of access in cross-border bankruptcy proceedings, which can be reviewed as follows:

I.2.1. The UNCITRAL Model Law of 1997 and its amendments

The model law are designed to distinguish direct access (the right of the foreign bankruptcy representative to approach the courts before a formal decision is made on recognition) and extend access (which follows from the full recognition of foreign proceedings and in itself involves applying various measures of assistance). This distinction has also resulted in various practical challenges, including to what extent the suspension of individual proceedings automatically applies at the direct access stage (Paulus & Dammann 2022: 203)

The UNCITRAL Model Law is the leading international reference in this area, having been adopted by over fifty countries to date, including the USA, UK, Japan, Singapore, and Mexico. This statute enshrines three synergetic principles: the access right, recognition of foreign proceedings and cooperation between judicial and administrative authorities (two complementary laws where one extends this system to the file). The 2022 amendments were introduced to improve the protection of access by broadening the description of the overseas insolvency representative and streamlining provisional recognition procedures (UNCITRAL Working Group V, 2022, p. 18).

The model law are designed to distinguish direct access (the right of the foreign bankruptcy representative to approach the courts before a formal decision is made on recognition) and extend access (which follows from the full recognition of foreign proceedings and in itself involves applying various measures of assistance). This distinction has also resulted in various practical challenges, including to what extent the suspension of individual proceedings automatically applies at the direct access stage (Paulus & Dammann 2022: 203)

The UNCITRAL Model Law is the leading international reference in this area, having been adopted by over fifty countries to date, including the USA, UK, Japan, Singapore, and Mexico. This statute enshrines three synergetic principles: the access right, recognition of foreign proceedings and cooperation between judicial and administrative authorities (two complementary laws where one extends this system to the file). The 2022 amendments were introduced to improve the protection of access by broadening the description of the overseas insolvency representative and streamlining provisional recognition procedures (UNCITRAL Working Group V, 2022, p. 18).

I.2.2.The amended European Insolvency Regulation No. 2015/848

The amended European Regulation No. 2015/848 is considered the most developed regional legal framework for regulating cross-border insolvency. It establishes an access regime within an integrated system based on the criterion of the center of main interests as the governing standard for determining international jurisdiction and applicable law simultaneously. The regulation distinguishes between main proceedings and secondary insolvency proceedings, establishing the principle of consultation and cooperation between the appointed administrator in the main proceedings and their counterpart in the secondary proceedings (Virgos & Garcimartín, 2022, p. 89).

The regulation has led to a highly significant outcome, as determining the center of main interests in a specific member state results in the exclusive jurisdiction of the courts of that state to initiate main bankruptcy proceedings, with its law applying to the substance of the dispute, which is known as the "principle of unity and limited universality" (Balz, 2022, p. 67).

I.2.3.Chapter 15 of the U.S. Bankruptcy Code

In 2005, the American legislator incorporated Chapter 15 of the U.S. Bankruptcy Code. Bankruptcy Code) inspired by the UNCITRAL Model Law, and this chapter has unprecedentedly enshrined the right of access for foreign bankruptcy representatives in U.S. legislation. Chapter 15 allows a foreign bankruptcy representative to directly approach the U.S. court to request recognition of foreign proceedings, whether they are main or non-main, with the resulting assistance measures ranging from an immediate stay of proceedings to the complete transfer of asset management (Leimbach et al., 2023, p. 312).

II. Criteria for Determining the Applicable Law in International Bankruptcy

II.1.Traditional Jurisprudential Theories

International legal doctrine has witnessed an in-depth debate regarding the governing principle for determining the applicable law in international bankruptcy proceedings, with two opposing theories contending in this matter :

II.1.1.The first theory: The theory of unity

The Unity Theory is based on the premise that bankruptcy proceedings should be singular and comprehensive, initiated in one country and automatically extending their effects to other countries. This theory is based on the logic of economic efficiency and achieving equal treatment for all creditors regardless of their nationalities and the locations of their assets (Gurrea-Martínez, 2022, p. 44). 44). Its proponents believe that the multiplicity of procedures leads to the fragmentation of the bankruptcy estate and the unequal treatment of creditors, which undermines investors' confidence in the international legal system.

II.1.2.The second theory: The theory of pluralism

In contrast, the pluralism theory asserts that each state has a legitimate interest in applying its own law to assets located within its territory, to creditors residing within it, and to contracts concluded under its law. Proponents of this theory argue that the automatic recognition of foreign bankruptcy proceedings involves a violation of national sovereignty and undermines the interests of local creditors (LoPucki & Doherty, 2022, p. 198).

II.2.The center of main interests (COMI) as the governing criterion:

This article concludes that the COMI criterion, as the ideal connecting factor for determination of applicable law and international jurisdiction in bankruptcy proceedings.

The principle of this criterion is that the governing law is the law of the place regularly and habitually administering the interests of a debtor which can be found out by third parties (Horton, 2023, p. 88).

EU and US lawmakers have created a presumption in law that the company's registered headquarters is a presumption of where its main interests lie. But such a presumption is rebuttable by contrary evidence. This assumption has resulted in major legal problems, motivating some corporations to "forum shop" (i.e., move their official headquarters right before starting bankruptcy proceedings) so that the selected jurisdiction best dresses them with the law (Pottow, 2022, p. 77).

The criterion that should be adopted to define the center of main interests would, according to this researcher, need to be based on substantial economic data rather than merely legal formalities and it found the existence in a given state of three integrated elements — these are namely the effective operation of management activity at the project stage; concentration of essential assets; and stability or durability of basic contractual relationships. In this sense, if modern jurisprudence can be said to have produced some catchall principle, it holds that the external appearance of the company before creditors is the best rule (Westbrook et al., 2023, p. 122).

II.3.The applicable law in bankruptcy and the principle of territorial sovereignty:

The determination of the applicable law in bankruptcy proceedings intersects sharply with the principle of territorial sovereignty in cases known as "partial bankruptcy," where the debtor has assets distributed across multiple countries. In these cases, European legislation tends to apply the law of the state where the assets are located (lex situs) to movable and immovable assets, while the law of the original jurisdiction (lex fori concursus) is applied to procedural matters and the distribution of priorities among creditors (Moss et al., 2023, p. 245).

The European Insolvency Regulation retains a number of exceptions to the principle of applying the law of the state where the proceedings are opened, as it refers to the law of the other state concerning real rights on assets subject to the law of a third state, employment contracts, and real estate transfer contracts, which is doctrinally expressed by the principle of "legal immunity" (Paulus & Dammann, 2022, p. 189).

III.The Impact of the Right of Access Principle on the Center of Main Interests (COMI)

III.1. The right of access and the issues of verifying the center of main interests

The most complex issues of access rights emerge when it comes to judicial verification procedures of the claim of the center of main interests in a specific jurisdiction. Granting the foreign bankruptcy representative direct access to the courts before completing the verification procedures for the center of main interests may lead to the implicit legitimization of foreign jurisdiction before the necessary judicial examination is completed (Gurrea-Martínez, 2022, p. 56).

Some researchers indicate that EU courts have faced numerous cases where a third party challenged the validity of the determination of the center of main interests after a foreign court issued its automatic orders to stay proceedings based on access rights, resulting in a conflict between the decisions of multiple courts, all of which affect the distribution of a single block of assets (Wessels et al., 2022, p. 134).

The researcher argues that the most appropriate solution lies in explicitly linking the right to direct access to the stage of provisional recognition so that the measures resulting from direct access are limited to conservatory and procedural ones only, without affecting the substantive decisions related to determining the applicable law on the essence of the dispute. This approach is consistent with the recent amendments proposed by UNCITRAL Working Group V (UNCITRAL Working Group V, 2022, p. 29)

III.2.The right to access and the phenomenon of shopping by specialization

The phenomenon of forum shopping is one of the most serious issues arising from the unregulated exercise of the right of access in cross-border bankruptcy proceedings. This phenomenon manifests when the debtor resorts to transferring their official headquarters or relocating their center of administration to another jurisdiction before filing for bankruptcy, with the aim of benefiting from a more flexible law or prioritizing their interests at the expense of creditors (LoPucki & Doherty, 2022, p. 215).

Take a look at the following cases where the pattern has emerged as clear: The debtor rushed to start proceedings in the most attractive jurisdiction and used access -- which really means filing for stay orders before anyone else can take share on whether their courts have competent jurisdiction. This led to the need for legislation in both the European Union and the United States, which would include rules restricting cases of a change of the center of main interests during the pre-insolvency suspicion period before opening proceedings (McCormack 2023 pp178).

III.3.The researcher's opinion on the balance between the right of access and the principal place of business test:

The researcher believes that the basic problem here is not because of the conflict between the right of access and above-mentioned criterion of center of main interests in itself, but because there isn't an international unified procedural mechanism that coordinates between stage of access and stage concerning prove correctness of jurisdiction. Thus the right of access should be viewed as a procedure based temporary precautionary right, which is not operative in itself for any undecided or founded substantive case on identical topic or issue at hand but ensures and prepares an adequate venue/ground to carry this out properly with due process rights consideration to make sure fairness where parties involved are afforded opportunity. Such interpretation resonates with the rationale of the UNCITRAL Model Law and is supported by the explanatory note accompanying the law, which explains that a right of access does not equate to automatic recognition of foreign procedures or acknowledgement of foreign jurisdiction legitimacy (UNCITRAL, 2023, p. 52).

IV. Comparative Jurisprudence in Light of the Right to Access

IV.1. American judicial precedents

A: The case of In re Fairfield Sentry Ltd (2013):

One of the most notable precedents on access rights under Chapter 15 is the case of Fairfield Sentry Ltd. The facts, as summarized in the decision, are that the hedge fund Fairfield Sentry was registered in British Virgin Islands; it was declared bankrupt there and its directors petitioned for recognition of the British Virgin Islands bankruptcy proceedings in U.S. Bankruptcy Court for Southern District of New York under Chapter 15. The decision concluded that in validating the determination of the center of main interests for purposes of recognizing a foreign bankruptcy proceeding under British Virgin

Islands law, it does not prevent the foreign bankruptcy representative from exercising its right to access a U.S. court and make its application there, thus demonstrating that these types of questions surrounding independence are separate from jurisdictional ones (In re Fairfield Sentry Ltd., 714 F.3d 127, 2nd Cir. 2013).

This ruling established a firm legal principle that the recognition of right of access does not require any previous determination regarding center of main interests and permitted foreign bankruptcy representatives to appear in U.S. courts seeking emergency precautionary measures while jurisdiction verification procedures were still ongoing. While this is a sensible approach from the technical or procedural side, if it lacks safety safeguards it could lead to exploiting for forum shopping purposes (Leimbach et al., 2023, p. 345).

B: The case In re Ocean Rig UDWInc.c. (2017)

The case of Ocean Rig UDWInc. c uncovered one of the most egregious examples of abuse in the principal place of business officer manipulation where a massive maritime company, Ocean Ri—registered in Cypru—movedd its head office to Cayman Islands just prior commencement of the proceedings and then filed for recognition with u.s. Bankruptcy Court for the Southern District on New York based off this access under chips 15. The Court granted this request, recognizing the Cayman proceeding as "main proceedings" (Inre Ocean Rig UDWInc., 570 B.R. 687, Bankr. S.D.N.Y. 2017).

A significant number of workshops, scholarly productions and academic conferences have taken place in the aftermath of this case-specifically for those who understand that to recognize these jurisdictional procedures is a great judicial failure legitimizing the use of the right of access as an instrument through which one can achieve, not international cooperation, but forum shopping (Pottow 2022: 91). While the influence of these criticisms on the research is conclusive, the researcher supports them and considers that in such cases it is necessary for courts to objectively investigate whether the center of main interests has changed as a condition for accessing the legal order.

IV.2.European Judicial Precedents

A. The case of Eurofood IFSC Ltd before the European Court of Justice (2006)

Although the case of Eurofood IFSC Ltd was issued prior to the recent amendments to the European Insolvency Regulation, it remains an indispensable legal and judicial reference in interpreting the principle of access rights in the European context. The facts of the case revolve around Eurofood, a subsidiary of the Italian Parmalat Group, registered in Ireland. When the parent company was declared bankrupt in Italy, the Italian court sought to initiate comprehensive main proceedings that would extend to the Irish company Eurofood. The European Court of Justice ruled that the registration of the company in Ireland creates a conclusive presumption of the existence of its main center of interests there, and this presumption can only be disregarded by strong evidence to the contrary (Case C-341/04, Eurofood IFSC Ltd, ECJ 2006).

This case established the principle that the right of access for foreign bankruptcy representatives does not justify infringing on the rights of creditors who relied on the law determined according to the declared center of main interests. It also confirmed that the notice of right of access must provide creditors with the opportunity to contest the validity of the jurisdiction determination (Virgos & Garcimartín, 2022, p. 102).

B . The case of Schmitt v. Deichmann GmbH (German Court of Appeals - 2021):

This German case added a new dimension to the interpretation of the right of access in the context of asset-heavy family businesses. The facts of the case involve creditors of Deichmann, a company that declared bankruptcy in the Netherlands, challenging the Dutch representative's right to approach German courts, demanding the freezing of the company's German assets before the jurisdiction issue is resolved. The Court of Appeal ruled that the access granted under the European Insolvency Regulation justifies the acceptance of the precautionary request immediately upon submission, with a separate date set for deciding on jurisdiction and determining the applicable law (OLG München, Az. 31 Wx 246/20, 2021).

The researcher believes that this ruling provides a balanced procedural model that achieves the goal of the right to access in safeguarding assets without harming the rights of local creditors in verifying the validity of jurisdiction and the applicable law.

IV.3. Judicial precedents in Asia-Pacific countries

Singapore: Case (2019) of Re Zetta Jet Pte Ltd :

This case, decided by the Singapore High Court, marks a significant milestone in the recognition of access rights in courtroom jurisprudence within the countries across the Asia-Pacific region. That involves Zetta Jet, a private airline based in Singapore, and against which the United States has sought bankruptcy protection in American courts when it was also declared bankrupt in Singapore. Dealing with the request of the American representative, for its part, the Singaporean court acted according to unified access principles that emerged (as a function of legislative choice) from the Singaporean legislator's adoption in 2017 of the UNCITRAL Model Law, ultimately deciding to coordinate between the two proceedings on a mutual basis through joint cooperation protocol [Re Zetta Jet Pte Ltd [2019] SGHC 53].

Otherwise, this judgment is a model to follow when faced with jurisdictional clashes in which parallel bankruptcy proceedings can be found, the rest of its exposé shows that access can serve as a two-fold sword, an instrument to grab hold of power but also a leeway towards the fruitful co-operation between court systems internationally.

V. Balancing the Right of Access and Public Order in International Bankruptcy

V.1. Public order as a restriction on the right of access

The right of access is not an absolute right in any modern legislative system; rather, it is subject to the restriction of public order, like all other procedural rights. International legislations have unanimously agreed that national courts have the authority to refuse to grant the right of access or recognize its measures if doing so contradicts the public order of the state whose courts are being appealed to. In this context, a fundamental question arises: What is the criterion used to assess this conflict? Is it sufficient for there to be a conflict with certain substantive legal provisions, or is it required that there be a conflict with the fundamental principles of the legal system? (Omar,2022,p,135).

International jurisprudence — particularly in light of the interpretation of the European Insolvency Regulation and the American Chapter 15 — has settled on the notion that the public policy exception should be applied narrowly, limited to cases where foreign proceedings explicitly violate fundamental rights or essential constitutional principles. The American judiciary has affirmed this approach in several cases where the lawsuit was dismissed due to the lack of conflict between foreign proceedings and public policy, despite differences in distribution rules (Horton, 2023, p. 99).

V.2.Protecting local creditors against foreign access rights :

The issue of protecting local creditors is one of the most prominent challenges facing the international bankruptcy system when applying the right of foreign access. Granting the foreign bankruptcy representative access and halting individual proceedings may result in the freezing of local creditors' claims until the proceedings in the foreign country are concluded, which could harm them if the applicable foreign law establishes priorities different from those guaranteed by their national law (Moss et al., 2023, p. 267).

A series of legislative and judicial solutions have addressed this issue, the most notable of which are requiring the foreign bankruptcy representative to provide sufficient financial security before granting access, exempting creditors whose rights arose under local law from the effect of the stay of proceedings, and allowing appeals before local courts against decisions issued by foreign courts that affect the rights of local creditors (Wessels et al., 2022, p. 156)

The researcher emphasizes that the most appropriate approach is to adopt a dual system that reconciles the requirements of international cooperation with the necessity of protecting local creditors, similar to what American law has adopted with its system of non-main secondary proceedings that allow local creditors to claim their rights according to their national law in a parallel and non-obstructive phase to the main proceedings abroad.

V.3.Prospects for development and legislative reform

The researcher concludes this study with a series of reform proposals aimed at enhancing the effectiveness of the right to access without compromising the requirements of procedural justice and protecting the affected parties.

First: It is proposed to amend Article 16 of the UNCITRAL Model Law to require the foreign bankruptcy representative, when submitting the initial access request, to provide a detailed report on the reasons for determining the center of main interests in the foreign state, along with documented evidence of the absence of arbitrary changes prior to the commencement of proceedings.

Secondly: It is proposed to establish a specialized international judicial body or resort to international arbitration to resolve jurisdictional disputes between countries when multiple bankruptcy proceedings involve a single debtor, provided that this body is granted the authority to bind the parties.

Thirdly: It is proposed that bilateral judicial cooperation agreements between countries include a special chapter on bankruptcy procedures that explicitly defines how the right to access and exchange information related to the center of main interests is exercised.

Fourth: The researcher recommends that developing countries and Arab countries, in particular, join the UNCITRAL Model Law or adopt national legislation inspired by its provisions, given the rapid expansion of their multinational companies in international operations, which necessitates the availability of a clear legal framework to regulate cross-border insolvency cases.

Conclusion: Results and Recommendations

First: the results

Given the depth of analysis provided, the research has arrived at a number of key conclusions that are summarised as follows:

1.This also facilitates the implementation of cross-border bankruptcy proceedings in a sense that it is a most technical but indeed implying infringements into the procedural boundary, therefore, it is becoming an indispensable energy source within the system, still carrying a quite procedural principle -- one might not make too much efforts to define but acts on such fundamental necessity of need for judicial collaboration across entities and continents. Yet further application remains possible only if clear legal safeguards against its abuse as a vehicle for forum shopping are provided (LoPucki & Doherty, 2022, p. 223).

2.The principle of right of access indirectly influences the assessment of centre of main interests (COMI); indeed, a request for access does not typically require explicit additional arguments to be accepted and hence strengthens the validity of the determination as to foreign jurisdiction — which decouples from it in terms by transferring the burden of proof on any other conclusion to the contesting party.

3. Both the American, European and Singaporean comparative judicial experiences took different approaches to address the accessibility right where all share the need for an autonomous jurisdictional control over whether or not to consider as victorious of its full legal effects in light regarding the determination of the place of interest.

4. The reviewed judicial precedents reveal that the most pressing issue is not related to the principle of the right of access itself, but rather to the mechanisms of procedural timing. The synchronization between granting access and issuing precautionary measures on one hand and resolving the issue of jurisdiction on the other is what gives rise to most practical problems.

5. The public policy exception to the right of access remains of limited and narrow effect in the international context, as courts generally adopt a restrictive interpretation of this exception, preventing its invocation as a pretext for excluding the recognition of foreign proceedings.

6. It is observed that developing countries, including Arab countries, mostly lack a clear legislative framework that regulates cross-border bankruptcy procedures and the related access rights, exposing their international companies to significant legal risks when faced with financially international crises

Secondly: Recommendations

1. Calling on Arab countries to join the UNCITRAL Model Law on Cross-Border Insolvency or adopt unified national legislation that adopts the principle of access and clearly and transparently defines its controls and mechanisms for implementation. The demand for Arab countries to join the UNCITRAL Model Law on Cross-Border Insolvency or adopt unified national legislation that embraces the principle of access and clearly and transparently defines its controls and implementation mechanisms.

2. Including provisions for cross-border bankruptcy and the right of access in regional economic agreements between Arab countries, particularly within the framework of the Gulf Cooperation Council and the Arab League, which contributes to reducing cases of jurisdictional overlap and conflicting rulings.

3. Enhancing judicial training in the field of international bankruptcy and conflict of laws, and exchanging judicial expertise between countries in the region and those with advanced experience in this field.

4. Urged UNCITRAL bodies to continue efforts to codify access rights principles within binding instruments — not just as model laws — to enhance legal certainty in the international insolvency framework.

5. Adopting "Judicial Cooperation Protocols" between national courts in multi-jurisdictional cases as a regulated judicial practice, inspired by the model established by the Singaporean Zetta Jet case.

References:

Balz, M. (2022). The European Convention on Insolvency Proceedings. In D. Ziegel (Ed.), Current Developments in International and Comparative Corporate Insolvency Law (3rd ed., pp. 54–89). Oxford University Press

Gurrea-Martínez, A. (2022). Rethinking the prohibition on foreign creditors in cross-border insolvency. European Business Organization Law Review, 23(1), 39–68. https://doi.org/10.1007/s40804-021-00228-w

Horton, B. (2023). Cross-border insolvency and the right of access: Rethinking the COMI standard in light of modern corporate structures. American Bankruptcy Law Journal, 97(1), 77–115

Leimbach, A., Reuter, C & ,.Schneider, J. (2023). Chapter 15 and the right of access: A practical guide to cross-border insolvency in U.S. courts (4th ed.). Wolters Kluwer

LoPucki, L. M & ,.Doherty, J. W. (2022). The determinants of professional fees in large bankruptcy reorganization cases: New evidence of venue shopping. Journal of Empirical Legal Studies, 19(2), 191–232. https://doi.org/10.1111/jels.12311

McCormack, G. (2023). Corporate rescue law: An Anglo-American perspective (3rd ed.). Edward Elgar Publishing

Moss, G., Fletcher, I. F & ,.Isaacs, S. (2023). The EU Regulation on Insolvency Proceedings (4th ed.). Oxford University Press

Omar, P. J. (2022). International insolvency law: Themes and perspectives (2nd ed.). Routledge

Paulus, C. G & ,.Dammann, R. (2022). European insolvency regulation: Commentary and practice (3rd ed.). C.H. Beck/Hart/Nomos

Pottow, J. A. E. (2022). COMI manipulation and the limits of international insolvency cooperation. Michigan Law Review, 120(4), 71–98

UNCITRAL. (2023). UNCITRAL model law on cross-border insolvency with guide to enactment and interpretation (2022 amendments). United Nations Publication

UNCITRAL Working Group V. (2022). Report of Working Group V (Insolvency Law) on the work of its sixty-first session. United Nations Document A/CN.9/1139

Virgos, M & ,.Garcimartín, F. (2022). The European insolvency regulation: Law and practice (3rd ed.). Kluwer Law International

Wessels, B., Markell, B. A & ,.Kilborn, J. J. (2022). International cooperation in bankruptcy and insolvency matters (3rd ed.). Oxford University Press

Westbrook, J. L., Warren, E., Sullivan, T & ,.Lawless, R. (2023). The law of debtors and creditors: Text, cases and problems (8th ed.). Wolters Kluwer.

Cases precedent

Case C-341/04, Eurofood IFSC Ltd [2006] ECR I-3813 (Court of Justice of the European Union)

In re Fairfield Sentry Ltd, 714 F.3d 127 (2nd Cir. 2013)

In re Ocean Rig UDW Inc, 570 B.R. 687 (Bankr. S.D.N.Y. 2017)

OLG München, Az. 31 Wx 246/20 (2021) — Schmitt v. Deichmann GmbH

Re Zetta Jet Pte Ltd [2019] SGHC 53 (Singapore High Court)

Article Info

Received: March 29 2026
Accepted: June 20 2026

How to cite this article:

Khariy Qsair, M. (2026). The Impact of the Right of Access Principle on Determining the Applicable Law in Cross-Border Insolvency Proceedings: A Comparative Analytical Study. *Revista de Științe Politice. Revue des Sciences Politiques,* no. 90, pp. 250-262.