UNCITRAL and Swiss insolvency law – an example of conceptual implementation*

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Abstract:

Starting with a short introduction to UNCITRAL's work in the field of insolvency law, the article discusses recent reforms of Swiss cross-border insolvency law in 2019, which introduced into Swiss legislation on ancillary insolvency proceedings COMI as an additional head of indirect jurisdiction, aligning Swiss law to some degree with both the EIR and the MLCBI. In addition, in particular, rules were passed for recognition of foreign insolvency-related judgments and for cooperation between concurrent proceedings (including enterprise groups). The article also discusses some issues which would need to be solved if the EU and Switzerland (possibly together with other countries) engaged in negotiations about a 'parallel' insolvency treaty, oriented along the lines of the EIR or UNCITRAL model laws.

Keywords: Swiss Private International Law Act (PILA); European Insolvency Regulation (EIR), UNCITRAL Model Laws on Insolvency, UNCITRAL Legislative Guide on Insolvency Law; COMI; recognition of foreign insolvencies; indirect jurisdiction; ancillary proceedings; insolvency-related judgments; cooperation; harmonization

A. Introduction

Most legal instruments of the United Nations Commission on International Trade Law (UNCITRAL) are little known in continental Europe, and perhaps even less so in Switzerland. This is particularly true in the field of insolvency law. While lawyers are likely to be familiar with, for example, the UNCITRAL Convention on the Recognition and Enforcement of Foreign

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Arbitral Awards (New York Convention)[1] or the United Nations Convention on Contracts for the International Sale of Goods (CISG)[2][3], the same is probably not true of the UNCITRAL Model Laws and Legislative Guides on insolvency law.

This lack of familiarity could, to some extent, still have been justified as long as these instruments had had little influence on Swiss law. Since at least the 2019 revision of Chapter 11 of the Swiss Private International Law Act (PILA),[4] however, this can no longer be maintained. Not only do UNCITRAL instruments shape developments worldwide and across Europe, but since the 2019 PILA revision, UNCITRAL's instrument have also – admittedly to a modest degree – influenced Swiss law. The radiating effect of UNCITRAL instruments, both direct and indirect (through influencing the legal systems surrounding Switzerland) makes them increasingly relevant – for Swiss law as well. This contribution first presents the relevant UNCITRAL instruments and then highlights the reforms of Swiss law influenced by those instruments.

B. UNCITRAL instruments in insolvency law

I. The UNCITRAL Working Group V

1. UNCITRAL

UNCITRAL was established in 1966 by a resolution of the United Nation General Assembly, with the mandate to promote the harmonisation and unification of international trade law and to remove legal obstacles to

1 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958), SR 0.277.12.

2 See United Nations Commission on International Trade Law, 'International Sale of Goods (CISG) and Related Transactions' <https://uncitral.un.org/en/texts/salegoods> (last accessed: 17.4.2026).

3 United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980), SR 0.221.211.1. Vienna and New York are the seats of the United Nations Commission on International Trade Law (UNCITRAL), which is headquartered in Vienna and also convenes in New York.

4 Federal Council Message of 24 May 2017 concerning the Amendment of the Federal Act on Private International Law (Chapter 11: Bankruptcy and Composition Agreements).

cross-border trade. It consists of 60 member states –including Switzerland, whose current term runs until 2031.[5]

The core activity of UNCITRAL lies in the drafting of international legal instruments. Various types of instruments are used: binding international conventions,[6] model laws[7] and guides and recommendations[8] for national implementation, as well as procedural rules[9] that parties may adopt by agreement.

The most significant UNCITRAL instrument is probably the CISG (Vienna 1980), which is currently in force in 97 states – including Switzerland since 1 March 1991.[10] In the area of arbitration law, UNCITRAL has set globally authoritative standards through the UNCITRAL Model Law on International Commercial Arbitration (1985/2006)[11] and the UNCITRAL Arbitration Rules (1976, most recently revised in 2021).[12]

For Swiss legal practice, these instruments are of direct relevance: The CISG applies by operation of law to the majority of cross-border contracts for the sale of goods involving Swiss parties, unless expressly excluded. As an international arbitration hub – with institutions such as the Court of Arbitration for Sport (CAS) in Lausanne and the WIPO Arbitration and

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5 United Nations Commission on International Trade Law, 'Member States History' <https://uncitral.un.org/en/about/faq/mandate_composition/memberhistory> (last accessed: 15.4.2026).

6 United Nations Commission on International Trade Law, The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, p. 13 et seq.

7 United Nations Commission on International Trade Law, The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, p. 14 et seqq.

8 United Nations Commission on International Trade Law, The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, p. 16.

9 United Nations Commission on International Trade Law, The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, p. 17.

10 See United Nations Commission on International Trade Law, 'Status: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG)' <https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status> (last accessed: 17.4.2026).

11 See United Nations Commission on International Trade Law, 'UNCITRAL Model Law on International Commercial Arbitration' <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration> (last accessed: 17.4.2026).

12 See United Nations Commission on International Trade Law, 'UNCITRAL Arbitration Rules <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration> (last accessed: 17.4.2026).

Mediation Center in Geneva – Switzerland is closely integrated into the arbitration law framework shaped by UNCITRAL.[13]

UNCITRAL is divided into working groups, each of which is active in specific areas of law and responsible for drafting legislative texts: Working Group I (Procurement), Working Group II (International Arbitration and Conciliation), Working Group III (Transport Law), Working Group IV (Electronic Commerce), Working Group V (Insolvency Law) and Working Group VI (Security Interests). The working groups meet once or twice a year, alternating between Vienna and New York. The number and areas of responsibility of the working groups may change over time.[14]

2. Insolvency law in particular

Working Group V (Insolvency Law) is one of the most productive legislative bodies within UNCITRAL and has, over the past two decades, addressed a remarkable range of issues in the field of cross-border insolvency law. In 1995, it commenced work on the development of a legal instrument on cross-border insolvency.[15] This work culminated in 1997 with the adoption of the Model Law on Cross-Border Insolvency (MLCBI).[16] The Model Law remains the most important UNCITRAL instrument in the area of insolvency law to date (see section II. below).

Following this instrument, the Working Group was mandated to develop a comprehensive legislative guide on national insolvency law, with flexible implementation approaches – functionally resembling a model insolvency law. The result of several years of work was the (over time multi-part) UNCITRAL Legislative Guide on Insolvency Law (‘Legislative Guide’).[17] The Legislative Guide (in its original Parts One and Two) is a comprehensive model instrument intended to serve as a template for states in drafting or reforming national insolvency legislation. In Switzerland, the content of

13 United Nations Commission on International Trade Law, The UNCITRAL Guide: Basic Facts about the United Nations Commission on International Trade Law, p. 10.

14 See United Nations Commission on International Trade Law, <https://uncitral.un.org/en> (last accessed: 17.4.2026).

15 Rodriguez, Zuständigkeiten im Internationalen Insolvenzrecht, mn. 243.

16 See United Nations Commission on International Trade Law, ‘UNCITRAL Model Law on Cross-Border Insolvency (1997)’ <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency> (last accessed: 17.4.2026).

17 See United Nations Commission on International Trade Law, ‘UNCITRAL Legislative Guide on Insolvency Law’ <https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law> (last accessed: 22.4.2026).

the Legislative Guide broadly corresponds to the provisions of the Swiss Debt Enforcement and Bankruptcy Act (DEBA) regarding bankruptcy and composition agreements (as well as avoidance actions in bankruptcy). Part One sets out the fundamental objectives of a modern insolvency law: maximising the value of the insolvency estate, balancing the interests of creditors and debtors, promoting the reorganisation of viable businesses, procedural transparency and efficiency, and market confidence in the legal system (Rec. 1) and sets out the general features an insolvency law should have (Rec 7). The second, more specific, part (Recs. 8 to 198) extensively addresses procedural aspects, covering the conditions for opening proceedings, the standing of the parties, the procedure for lodging and classifying creditor claims, the treatment of security interests and rights of separation, as well as the rules on realisation and distribution. Particular attention is paid to the role of the court and the principle of equal treatment of creditors. The guide also proposes a restructuring procedure as well as instruments for preventing abusive conduct prior to insolvency, such as the avoidance of asset transfers – i.e. a comprehensive (domestic) insolvency law.

The Legislative Guide was first supplemented in 2010 with a Part Three (Treatment of Enterprise Groups in Insolvency).[18] This third part deals with rules (for example, on communication and cooperation between parallel insolvency proceedings opened against companies within the same corporate group) and possible strategies (such as the appointment of a single insolvency administrator for several group companies, 'insolvency protocols' on communication and cooperation, etc.) for handling group insolvencies.[19]

The Working Group subsequently undertook an update of the Guide to enact the MLCBI, which was completed in 2013. It then entered into several years of negotiations that culminated in 2018 in the adoption of a further Model Law, namely the Model Law on Insolvency-Related Judgments (MLIJ).[20] The purpose of this Model Law is to close a regulatory gap with respect to decisions that are closely connected to insolvency proceed-

18 See United Nations Commission on International Trade Law, 'UNCITRAL Legislative Guide on Insolvency Law, Part Three: Treatment of Enterprise Groups in Insolvency' <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/leg-guide-insol-part3-ebook-e.pdf> (last accessed: 22.4.2026).

19 Rodriguez, ZZPInt 15/2010, 267 (267–296).

20 See United Nations Commission on International Trade Law, 'UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018)'

ings (such as avoidance actions) but do not qualify as 'insolvency decrees' and therefore are not covered by the recognition under the MLCBI. The EIR addresses such decisions in its Article 32(1), second subparagraph. The MLIJ in turn contains a highly detailed set of rules on the conditions for recognition of such decisions.[21]

As early as 2019, a fourth part was added to the existing three parts of the Legislative Guide. This part addresses the obligations of management bodies in the period approaching insolvency (Part Four: Directors' obligations in the period approaching insolvency, including in enterprise groups, 'LG Part 4').[22] The aim of the recommendations contained therein is to establish standards that help prevent misconduct by management in the lead-up to insolvency and above all highlight the need to respond to financial difficulties at an early stage.

In the same year, a further Model Law was adopted, this time on the treatment of group insolvencies (Model Law on Enterprise Group Insolvency – MLEGI).[23] It addresses the handling of insolvency proceedings involving several companies belonging to the same corporate group in different countries and contains various proposals to coordinate such proceedings or to prevent a multiplication of proceedings in a group context – including, for example, the option of transferring jurisdiction for the opening of proceedings to another state in which proceedings relating to other group companies are taking place. It builds in part on the recommendations contained in Part Three of the Legislative Guide, but also goes beyond them.[24]

In response to the economic consequences of the COVID-19 pandemic, Working Group V adopted in 2021 a further addition to the Legislative Guide containing legislative recommendations on the insolvency of micro,

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<https://uncitral.un.org/en/texts/insolvency/modellaw/mlij> (last accessed: 22.4.2026).

21 See Veder/Bork, The UNCITRAL Model Laws on Cross-Border Insolvency and on the Recognition and Enforcement of Insolvency-Related Judgments as well as Carles, Jurisdiction and Recognition of Insolvency-Related Judgments, both *passim*.

22 See United Nations Commission on International Trade Law, 'UNCITRAL Legislative Guide on Insolvency Law, Part Four: Directors' obligations in the period approaching insolvency <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/19-11273_part_4_ebook.pdf> (last accessed: 22.4.2026).

23 See United Nations Commission on International Trade Law, 'UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment (2019)' <https://uncitral.un.org/en/MLEGI> (last accessed: 22.4.2026).

24 See Fn 19.

small and medium-sized enterprises (Part Five, Treatment of MSME Insolvencies).[25]This new section proposes a simplified insolvency procedure with low thresholds, reduced costs and simplified rules, designed to accommodate the particular situation of such businesses (UNCITRAL Legislative Guide on Insolvency Law for MSMEs, Rec. 1-26).

In 2025, UNCITRAL issued a non-normative, explanatory foundational document on asset tracing in the insolvency context (Key Principles and Background Notes on Asset Tracing in Insolvency).[26] These 'Key Principles' provide a reasonably comprehensive overview of – primarily common law – existing asset tracing instruments, including instruments of civil procedure.

Since 2025, the Working Group has been engaged in the demanding task of developing a model law on the law applicable in insolvency proceedings. The central question is the scope of application of the lex fori concursus in cross-border insolvency proceedings, particularly its exceptions (specific contracts, secured rights, arbitral proceedings). The Working Group has set itself the goal of presenting a draft in the summer of 2026.[27]

II. The Model Law on Cross-Border Insolvency in particular

As noted, UNCITRAL can produce both binding conventions (such as the New York Arbitration Convention or the CISG) and 'soft law' instruments, such as model laws or legislative guides. In the field of insolvency law, UNCITRAL has primarily issued soft law instruments.

25 See United Nations Commission on International Trade Law, 'UNCITRAL Legislative Guide on Insolvency Law, Part five: Insolvency law for micro- and small enterprises' <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/msms_insolvency_ebook.pdf> (last accessed: 2.5.2026); Interestingly, several fundamental concepts of this Model Law are incorporated into the proposed introduction of a debt discharge procedure in Switzerland, such as the basic distinction between simplified composition proceedings involving limited asset liquidation and proceedings without assets and without liquidation. See Section 3.2.4.2 below.

26 See United Nations Commission on International Trade Law, 'Asset Tracing and Recovery in Insolvency Proceedings: UNCITRAL Toolkit and Background Notes'<https://uncitral.un.org/sites/default/files/media-documents/EN/Texts/UNCITRAL/2513250e-uncitralbackgroundnotesatr-ebook-accessible.pdf.> (last accessed: 22.4.2026).

27 See United Nations Commission on International Trade Law, 'Working Group V: Insolvency Law' <https://uncitral.un.org/en/working_groups/5/insolvency_law> (last accessed: 2.5.2026).

The UNCITRAL Model Law on Cross-Border Insolvency (MLCBI is the ‘crown jewel’ of Working Group V.[28] It has been implemented by over 40 states (with greater or lesser fidelity to the original) – primarily in the common law world.[29] The United States has entirely aligned its recognition law in Chapter 15 of the US Bankruptcy Code with the Model Law; legal systems such as those of Australia, Canada, as well as England and Wales are also based on the Model Law.

In the Civil Law world, the influence of the MLCBI has been considerably more modest (although it found partial implementation many countries in Latin America).[30] In Europe in particular, the EU instruments (in insolvency law, for example, the EIR,[31] which also covers the subject matter of the MLCBI) have supplanted the UNCITRAL instruments as models – not least because of the binding character of EU instruments.

The MLCBI has not been without influence on Switzerland (see below). With regard to the other UNCITRAL instruments in the insolvency area, their influence is limited, though it is also difficult to measure, since these texts have frequently served as a source of inspiration for legislative work even without explicit reference – in particular the provisions of the Legislative Guide.

C. UNCITRAL and Swiss insolvency law

I. No influence on the origins of PILA and DEBA

The PILA, and in particular its Chapter 11, dates from the 1980s (adopted on 18 December 1987, in force since 1 January 1989) – predating the MLCBI. Even the (failed) European Convention on Certain International Aspects of

28 See Markus, SZW 1998, 15 (15 et seqq.).

29 See United Nations Commission on International Trade Law, ‘Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)’ <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> (last accessed: 2.5.2026).

30 See the list in the preceding footnote. The implementation in Mexico, for example, includes the criterion of reciprocity, which is not provided for in the Model Law.

31 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141/19, 5.6.2015, 19–72.

Bankruptcy of 1990 was unable to influence the PILA in time,[32] let alone the subsequent UNCITRAL instruments.

The same applies a fortiori to the Federal Debt Enforcement and Bankruptcy Act (DEBA), which was enacted more than 100 years before the first UNCITRAL Legislative Guide. Even the major revision of the DEBA's restructuring law in 2012 (in force since 1 January 2014)[33] made no reference to the UNCITRAL instruments and excluded international matters. It was only the subsequent 2019 revision that incorporated concepts from UNCITRAL Model Laws and drew certain provisions from the instruments described above.

II. UNCITRAL and the 2019 PILA revision

1. Key features of the revision

On 18 March 2018, Parliament adopted – following relatively brief but at times surprisingly contentious deliberations – the revision of Chapter 11 of the PILA.[34] It largely followed the Federal Council's draft and message of 24 May 2017.[35] This marked the first comprehensive revision of an entire PILA chapter since it entered into force on 1 January 1989.[36]

The impetus for the revision was less international developments than a general dissatisfaction with certain elements of the existing Chapter 11.[37] A significant portion of scholars and practitioners found the previous framework to be cumbersome, costly, and unnecessarily complex in its practical application.[38] In particular, the reciprocity requirement proved

32 The 1983 PILA Message (BBl 1983 I 236, 448) contains only references to older bilateral conventions.

33 Message concerning the Amendment of the Federal Act on Debt Enforcement and Bankruptcy (Restructuring Law) of 8 September 2010 (BBl 2010 6455).

34 Rodriguez, Jusletter, 14 January 2019, mn. 1

35 See Rodriguez, Jusletter, 14 January 2019, mn. 1; Message concerning the Amendment of the Federal Act on Private International Law of 24 May 2017 (BBl 2017 4125), Chapter 11: Bankruptcy and Composition Agreements.

36 See Draft Amendment and Message concerning the Amendment of the Federal Act on Private International Law: Chapter 12: International Arbitration <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20180076> (last accessed: 20.4.2026).

37 Rodriguez, Jusletter, 14 January 2019, mn. 12.

38 Rodriguez, Jusletter, 14 January 2019, mn. 12; see also Gehri/Kostkiewicz, SZIER 2/2009, 193 passim; Neuroni Naef/Naef, AJP/PJA 2008, 1399 passim; Rodriguez,

to be expensive (leading to 'battles of expert opinions') or resulted in the non-recognition of foreign bankruptcy decrees due to circumstances (the private international law of the state of origin) that lay outside the sphere of influence of the parties concerned.[39]

The mandatory opening of ancillary bankruptcy proceedings as an automatic consequence of the recognition decision was also criticised. Since only certain categories of creditors are permitted to participate in these ancillary proceedings (namely creditors secured by pledge and privileged creditors), conducting ancillary proceedings proved redundant in many cases where no qualifying domestic creditors existed (unsecured creditors and creditors with non-privileged claims may participate in domestic proceedings only where a branch establishment of the foreign debtor is concerned).[40]

Further problems arose from the increasing prevalence of the international instruments mentioned above: the fact that both the EIR and the Model Law had established the debtor's centre of main interests (COMI) as the jurisdictional criterion for the cross-border recognition of corporate insolvencies exerted a certain pressure on the existing jurisdictional principle of the PILA, which effectively relied solely on the registered seat of the company. Increasingly, the question arose as to whether foreign insolvency decisions rendered at the COMI other than the registered seat should be recognised.[41] Under the previous law, this was generally not the case.[42]

These factors led the Federal Council to publish a preliminary draft on 14 October 2015 and, on 24 May 2017, a draft and explanatory message for the revision of Chapter 11 of the PILA (bankruptcy and composition proceedings).[43] On 18 March 2018, Parliament approved the draft with

SZIER/RSDIE 3/2015, 399 et seqq.; Staehelin in Riemer/Kuhn/Vock (eds), Schweizerisches und internationales Zwangsvollstreckungsrecht: Festschrift für Karl Spühler zum 70. Geburtstag, 407 et seqq.; Schwander in Recht und Internationalisierung, 331 et seqq.; Schnyder in Gottwald (ed), Aktuelle Entwicklungen des europäischen und internationalen Zivilverfahrensrechts, 385 et seqq.

39 Rodriguez, Jusletter, 14 January 2019, mn. 13.

40 Rodriguez, Jusletter, 14 January 2019, mn. 14.

41 Rodriguez, Jusletter, 14 January 2019, mn. 15; see also Rodriguez, Zuständigkeiten im internationalen Insolvenzrecht, mn. 808 et seqq.; Rodriguez/Meier, EuZ 2019, 96 et seqq.

42 Rodriguez, Jusletter, 14 January 2019, mn. 15; the courts of the Canton of Ticino have developed a practice according to which certain COMI decisions may be recognised, see Jaques, La reconnaissance et les effets en Suisse d'une faillite ouverte à l'étranger.

43 BBl 2017 4125.

minor modifications. The new provisions have been in force since 1 January 2019.

2. Influence of the MLCBI on PILA

As explained, the work on revising Chapter 11 of the PILA, which entered into force on 1 January 2019, dates back to approximately 2014 – immediately following the entry into force of the revision of the substantive restructuring law. At that time, the MLCBI had already been adopted, and work on the MLIJ as well as on the MLEGI was already well underway. These instruments were therefore able to exert, directly or indirectly, a certain influence on the Swiss reform project. They did so to a limited yet noteworthy extent.[44]

One of the objectives of the revision proposal for Chapter 11 of the PILA was to respond to these international developments. The explanatory message on the revision of Chapter 11 of the PILA[45] recalls that, in the case of a model law, 'the priority is not verbatim adoption, but rather the implementation of the essential ideas. [...] In exactly this spirit, the draft takes on board the core elements of the UNCITRAL Model Law, while refraining from a comprehensive adoption. Integration into the PILA allows for adaptation to Swiss procedural particularities and preserves the character of the PILA as a comprehensive codification. Through this implementation [revision of Chapter 11 of the PILA], Switzerland can join the ranks of states that have implemented the Model Law – and thus the most widely recognised international standard – in their own way.'[46]

Whether this statement can be agreed with, in particular with regard to Switzerland as an 'implementing state,' merits closer examination.[47] In any event, UNCITRAL does not list Switzerland among its implementing states.[48] The following sections examine the influence of the MLCBI and

44 Specifically, the Message concerning the revision of Chapter 11 of the PILA refers at the outset to the UNCITRAL instruments (BBl 2017 4127).

45 BBl 2017 4134.

46 BBl 2017 4134 (Translation by the Author).

47 See Rodriguez, Joly éditions, Mélanges en l'honneur de Jean-Luc Vallens; see also Staehelin in Grolimund/Koller/Loacker/Portmann (eds), Festschrift für Anton K. Schnyder, 358 et seqq., 371.

48 See United Nations Commission on International Trade Law, 'Status: UNCITRAL Model Law on Cross-Border Insolvency (1997)' <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> (last accessed: 2.5.2026).

other UNCITRAL Model Laws on the PILA, and in some instances also on the DEBA.

a) The revised Article 166 PILA and the arrival of 'COMI'

Article 166 of the old PILA required, for recognition purposes, that the foreign decree to be recognised had been issued at the debtor's domicile or registered seat. The seat was determined – including for a foreign seat – in accordance with Art. 20 et seq. PILA. For legal entities, this led (and still leads, under the still-applicable Art. 21 PILA) to the application of the incorporation principle, which is firmly embedded in Swiss legal understanding, particularly in company law.

With the adoption of the UNCITRAL Model Law – and in Europe through the EIR[49] – the criterion of the centre of main interests (COMI) has gained increasing prominence worldwide and across Europe (for an explanation of what COMI is, see Art.16(3) MLCBI[50] and Art. 3 EIR).

Strict application of the incorporation principle under Art. 166 of the old PILA would, for example, have rendered unrecognisable bankruptcy decrees issued by EU member states and other important Swiss trading partners that were (lawfully under EU law) issued in proceedings opened at the debtor's centre of main interests (COMI), where that differed from the registered seat.[51] In order to avoid such 'limping' legal relationships, the COMI criterion – as provided in the Model Law and the EIR as the principal criterion for main proceedings – was newly added to Art. 166(1) PILA as an alternative basis for indirect jurisdiction (Art. 166(1)(c)(2) PILA).

However, the incorporation principle was not abandoned but merely supplemented, for recognition purposes in international matters, by the COMI: decisions rendered in proceedings opened at a foreign centre of main interests diverging from the place of incorporation are now also recognisable (Art. 166(1)(c)(2) PILA). In doing so, the PILA acknowledges, on the one hand, the legal reality created by the EIR and UNCITRAL instruments, and, on the other, aligns Swiss law with these instruments.

49 Fn 31.
50 '3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.'
51 BBl 2017 4128.

As regards the interpretation of COMI, however, the PILA clearly follows the interpretation of the EIR provision (by the CJEU) rather than the – arguably more open – interpretation of the corresponding Model Law provision.[52]

At the same time, an important clarification introduced by the revised PILA must be noted: where a company has its registered seat in Switzerland (Art. 21(1) PILA in conjunction with the second half-sentence of Art. 166(1)(c)(2) PILA), recognition of foreign insolvency proceedings opened at the COMI must be refused. This priority of the registered seat over the COMI represents a clear and deliberate departure from the Model Law (and the EIR).

The very targeted introduction of COMI into Swiss law thus does not represent a true paradigm shift in the PILA system, but rather a minimal adjustment to avoid unwanted refusals of recognitions – while also acknowledging the fact that COMI has now become the globally recognised 'standard' with respect to indirect jurisdiction.

Together with other, less significant amendments, Chapter 11 of the PILA now shares essential features of the MLCBI, namely the recognition of insolvency decrees issued at the COMI, with essentially the same conditions and legal effects as those provided for by the Model Law. Nonetheless, certain differences remain, such as the priority accorded to the (Swiss) registered seat, or the fact that decisions rendered neither at the registered seat nor at the debtor's domicile are not recognisable at all (not even as 'non-main proceedings,' which the Model Law optionally provides for).

b) Coordination of proceedings

The newly added Art. 174*b* PILA, introduced by the revision of Chapter 11, is primarily inspired by the MLCBI (Art. 25 et seq.).

The explanatory message[53] describes the purpose of this provision as follows: 'Where several bankruptcy proceedings in respect of the same debtor are conducted simultaneously (e.g. parallel branch and ancillary bankruptcy proceedings), or where several companies within a group are affected by bankruptcy proceedings at home and abroad, the bodies involved should be able to coordinate their actions with one another. For example, the

52 BBl 2017 4136.
53 BBl 2017 4142.

exchange of information with foreign authorities should be possible, and arrangements ('insolvency protocols') should be able to be concluded.'[54]

The message further recalls that the 'concept of coordination is to be understood broadly and encompasses, in particular, all forms of cooperation covered by Art. 25–27 of the UNCITRAL Model Law, including the examples referred to in Art. 27 (e.g. coordination of simultaneously pending proceedings; coordination of the administration and supervision of the debtor's assets and affairs).' Furthermore, 'the power to coordinate procedural matters directly with a foreign authority [...] also includes the power to communicate directly between the relevant authorities.'[55]

Although Art. 174*b* PILA is shorter and more general in its formulation than Art. 25-27 of the MLCBI, the reference in the message and the enumeration therein of the most important forms of coordination make it clear, in our view, that this provision is intended to incorporate, in substance, the regulatory content of the Model Law. In practice, however, the significance of this provision has remained modest – which also applies to its model, the MLEGI, which has not yet been implemented by a single state.

c) Treatment of ancillary proceedings

A further significant innovation of the PILA revision concerned the possibility of dispensing with ancillary bankruptcy proceedings (Art. 174*a* PILA). This innovation was, however, justified more by practical needs and cost considerations than by a desire to conform to an UNCITRAL instrument. The Model Law itself says very little about the concrete consequences of recognition and leaves it to implementing states to determine how recognition effects are to be achieved (Art. 20 MLCBI).

That said, with the increased flexibility in the legal consequences of recognition and the curtailment of secondary proceedings introduced by the PILA revision, the PILA now moves closer to the more flexible regime of the MLCBI, and in some respects even to the recommendations of the MLEGI. Admittedly, the parallels with the regime of the EIR (with

54 For insolvency protocols, see Rodriguez, ZZPInt 15/2010, 267 et seqq.
55 BBl 2017 4142 (translated by the Author).

its equally optional secondary proceedings) are greater than with the UNCITRAL instruments.[56]

3. Influence of the Model Law on Insolvency-Related Judgments on PILA

Until the Federal Supreme Court's decisions in the Sabena v. Swissair case – which even came before the International Court of Justice in The Hague – the issue of insolvency-related actions was largely unknown in Switzerland.[57] This was the case despite the fact that the EIR, in its original version, had already addressed and regulated this category of decisions in Art. 32(1), second subparagraph, since 2001.[58]

Work on the revision of the PILA and on the development of the Model Law on Group Insolvencies proceeded partly in parallel. The completion of that Model Law in 2019 (with preparatory work dating back to 2017) and the fact that the EIR had always provided a framework for insolvency-related actions led, in the course of the PILA revision, to the desire to also regulate these cases.[59] A dedicated new article – Article 174*c* PILA – was created for this purpose.

Although the substantive concerns of Article 174*c* PILA correspond to those of the MLIJ, the regulatory approach is fundamentally different. The MLIJ addresses all aspects of the recognition of insolvency-related decisions, both procedural and substantive, and comprises 17 articles. Article 174*c* confines itself to one paragraph, fitting into the regulatory framework of the PILA, in particular Chapter 11. Procedural questions and the conditions for recognition (with the exception of indirect jurisdiction) are left to Art. 25 et seq. PILA. That said, it establishes a new, independent condition for recognition and defines indirect jurisdiction.

A separate condition for recognition is that the insolvency proceedings with which the decision to be recognised is closely linked must have been

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56 However, the ancillary proceedings under the PILA are not entirely comparable to secondary proceedings under the EIR, as the former are limited to a restricted group of creditors; see Art. 172 PILA, unlike Art. 45(1) EIR.

57 Decision of the Swiss Federal Supreme Court 140 III 120; Markus, AJP/PJA 3/2017.

58 'Unterabsatz 1 gilt auch für Entscheidungen, die unmittelbar aufgrund des Insolvenzverfahrens ergehen und in engem Zusammenhang damit stehen, auch wenn diese Entscheidungen von einem anderen Gericht erlassen werden.'

59 BBl 2017 4144.

recognised pursuant to Art. 166 PILA. This requirement is derived from Art. 13(b) of the MLIJ.[60]

A significant departure from the MLIJ is contained in Article 174c with regard to indirect jurisdiction. Instead of the highly complex regime of Art. 13 and 14 of the MLIJ,[61] Art. 174*c* PILA does not, as a general rule, impose any criterion of indirect jurisdiction. It does, however, make one important exception: where insolvency proceedings have been opened in Switzerland, a closely linked foreign decision is not recognisable. This departs from the EIR and the Model Law – but the restriction appears comprehensible in light of the Swiss legal understanding that insolvency-related actions form part of the *vis attractiva concursus* and should therefore be conducted exclusively in Switzerland.[62]

4. Influence of the Legislative Guides on substantive law

a) Influence on cooperation provisions in PILA and DEBA

The Legislative Guide obviously had no influence on the DEBA of 1898. Even in later revisions, such as the revision of composition law, the legislative materials contain no indication that the Legislative Guide had any influence on statutory amendments.

The sole exception is Part Four of the Legislative Guide (added in 2010) on group insolvencies, which formed the basis of the 2019 Model Law on Enterprise Group Insolvency, specifically with regard to communication and cooperation between parallel insolvency proceedings. The MLCBI had already included provisions on cooperation between parallel proceedings. Part Four of the Legislative Guide elaborated on these. In the context of the 2019 revision, these models led to the creation of Art. 174*b* PILA and 4*a* DEBA. Both provisions state that, in proceedings that are substantively connected, the authorities and bodies involved may coordinate their actions with one another and with foreign authorities and bodies.

60 See Commentary (Rodriguez) of Art. 13 in: Veder/Bork, The UNCITRAL Model Laws on Cross-Border Insolvency and on the Recognition and Enforcement of Insolvency-Related Judgment.

61 See Commentary (Rodriguez) of Art. 13 and 14 in: Veder/Bork, The UNCITRAL Model Laws on Cross-Border Insolvency and on the Recognition and Enforcement of Insolvency-Related Judgment.

62 BBl 2017 4144, see also Art. 289 Swiss Debt Enforcement and Insolvency Act.

b) Parallels of Part Five with the new discharge of residual debt procedure

Part Five of the Legislative Guide on MSME Insolvencies is of interest in connection with the new reorganisation procedure for natural persons – the proposed Swiss discharge of residual debt procedure.[63] Even though it does not appear to constitute a direct source for the revision work, this instrument may, as part of a general international trend towards debt discharge procedures for natural persons, have reinforced the pressure to introduce such procedures in Switzerland as well – although here too the concrete developments in neighbouring states have probably had a greater influence. Despite the absence of any discernible mutual influence between the projects in their respective drafting phases, the legislative proposal for a revised reorganisation law for natural persons shows striking parallels to the basic structure of Part Five of the Legislative Guide. For example, both instruments propose two alternative procedures: one for a modest but positive composition dividend and one for so-called 'no-asset' proceedings.[64]

D. A Pan-European instrument based on UNCITRAL models?

Even if the Swiss provisions have considerably evolved thanks to the last reform to a more generous and effective recognition regime, there is still a considerable gap between them and the level of cooperation and coordination that the EuInsReg provides for member states. The same applies to other European jurisdictions that are economically closely integrated in the EU, such as Norway, Iceland, the UK and Danmark.[65]

A way to close that gap and to have the legal integration match the level of economic integration would be to follow the example of the Brussel I (recast) Regulation and its parallel Lugano Convention (*de facto* extending

63 Message concerning the Amendment of the Federal Act on Debt Enforcement and Bankruptcy (Debt Restructuring Proceedings for Natural Persons) of 15 January 2025, BBl 2025 356; for the current status in Parliament (final vote scheduled for June 2026), see Federal Office of Justice, 'Sanierungsverfahren für natürliche Personen' <https://www.bj.admin.ch/bj/de/home/wirtschaft/gesetzgebung/schuldsanierung.html> (last accessed: 23.4.2026).

64 The Federal Council's proposal contains, similarly to Part Five of the Legislative Guide, both a simplified restructuring procedure and a 'no-asset' procedure ('restructuring bankruptcy'), which display striking parallels but also important differences.

65 Danmark is a EU Member State but, due a special status, does not participate in judicial cooperation policies outside the Brussel I/Lugano context.

the Brussel Regulation's scope to the EFTA states). An obvious extension of this strategy would consist in drafting a parallel convention the EuInsReg to which the countries cited above, including Switzerland, could adhere.

This idea is not new. Early attempts at parallel conventions to EU Regulations were made in respect of the EU service and evidence Regulations[66]. Negotiations in this respect were quite advanced but ultimately failed due to disagreement on the 'automatic' takeover of future changes (on which the EU insisted) that were deemed not acceptable for non-members. Later, the EU instruments became more and more integrative and less amenable to become parallel instruments (including registers, eliminating ordre public reservations and partly including applicability to third countries). This development has, to a certain point, also taken place with respect to the EIR (inclusion of insolvency registers, automatic recognition, complex coordination proceedings). In order to 'relaunch' the idea of parallel Conventions (for instance, one parallel to the EIR), the 'parallelism' would need to be limited to core elements of the instrument. When assessing these core elements, UNCITRAL Instruments, especially the MLCBI, will play an essential role, though its provisions might well be complemented with some detail from the EIR, but probably not all of its elements.

This approach would not need to be limited to the insolvency domain but could be embedded in a more general strategy to extend *ratione materiae* the 'Lugano Sphere' to other domains, notably to most domains in the field of international civil jurisdiction and recognition. *Rationae loci* these parallel conventions could encompass the EU (including Denmark) and its 'close non-members', such as Switzerland, Norway, Iceland, the UK or even Canada.

E. Conclusion

The following table summarises the influences of the UNCITRAL instruments on Swiss law described in the preceding chapters:

66 Regulation (EU) 2020/1784 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 405, 2.12.2020, pp. 40–78 and Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ L 405, 2.12.2020, pp. 1–39. See, on the (failed) attempts for a parallel convention on these issues in the late 2000's: Rodriguez/Markus, p. 184.

UNCITRAL Instrument	Swiss Law	Content
MLCBI (Art. 16)	PILA Art. 166 I (c) 2	COMI as recognised criterion for indirect jurisdiction
MLCBI (Art. 20), MLEGI	PILA Art. 174*a*, DEBA Art. 4*a*, PILA Art. 174*b*	Waiver of ancillary proceedings
MLIJ	PILA Art. 174*c*	Recognition of insolvency-related judgments
MLCBI (Art. 25 et seqq.), ML on Group Insolvencies	PILA Art. 174*b*, DEBA 4*a*	Coordination of parallel proceedings

It would be an exaggeration to claim that the UNCITRAL instruments in the insolvency area have substantially influenced Swiss law. Yet their influence has not been negligible – for constant dripping wears the stone: the radiating effect of, for example, the MLCBI has had an impact on EU instruments and on the legal systems of neighbouring states[67] – all of these factors in turn have created a pressure for adaption that was (also) a significant contributing factor to the 2019 PILA revision. As shown above, some of the amendments would probably not have found their way into Swiss law without the UNCITRAL Model Laws. Not all of them may have played an equally important role to date: Article 174*a* PILA plays an eminently important role in practice; for other provisions (such as those on cooperation between different proceedings), their time may yet come – but Switzerland is prepared for potential cases and can claim a legal system that at least keeps pace with international developments.

To go any step further in terms of cooperation, only a treaty-based reciprocal approach within Europe seems viable. UNCITRAL Model Laws, especially the MLCBI could serve as a substantial baseline for a future parallel Convention (following the 'Lugano-logic') to the EIR, provided that the concept of 'parallelism' moves away from the idea of a full parallelism

67 EU legal sources (in particular the EIR) have likely exerted at least as much pressure for legislative adaptation on Switzerland as the UNCITRAL instruments. The extent to which the UNCITRAL instruments have influenced EU legal sources would merit a separate study. The parallelism in these respective developments suggests that the UNCITRAL instruments triggered important reform impulses within the EU.

with the now highly integrative EU instruments towards a parallelism of core concepts as outlined in the UNCITRAL Instruments.

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