



# **INTERNATIONAL INSOLVENCY INSTITUTE**

## **COMMITTEE ON INTERNATIONAL JURISDICTION AND COOPERATION**

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### **JUDICIAL GUIDELINES FOR COORDINATION OF MULTI-NATIONAL ENTERPRISE GROUP INSOLVENCIES**

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**JUDICIAL GUIDELINES FOR  
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**Introduction**

The existing cross-border statutory schemes and proposals state common goals for multi-national enterprise group insolvencies, including efficient markets, increased certainty for trade and investment, fair and efficient administration to protect the interests of parties, protection and maximization of the value of the debtor's assets, and facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.<sup>1</sup> Several of the existing international insolvency schemes also share the concept of the debtor's "center of main interests," frequently referred to as the "COMI." These regimes assume that the debtor's value is more likely to be maximized if its insolvency is administered from a central location, and they seek to achieve this goal by recognizing unified international jurisdiction over the debtor and its assets, wherever found, in the national court of the country in which the debtor's COMI is located.

Despite these shared goals and common approaches, the existing international insolvency regimes have not resolved many of the problems that arise when multi-national enterprise groups fail. Most important for these Guidelines, no legislation anywhere in the

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<sup>1</sup> See European Council Regulation on Insolvency Proceedings, Council regulation 1346/2000, 29 May 2000, on insolvency proceedings, 2000 O.J. (L160) ("EU Regulations"), Par. 2 of Preamble; 11 U.S.C. § 1501(a). These provisions track the preamble to the Model Law. See also the Overview to the NAFTA Principles, which demonstrate that they are intended to achieve some of the same goals as the EU Regulations within the NAFTA member states: "One of the principal purposes of the NAFTA is to promote trade and investment on a regional basis throughout North America, without regard to national borders. As the EU Regulation recognizes, such a goal requires commercial predictability in the event of financial default and is best served by mechanisms that maximize the value of enterprises in financial distress. Cooperation and coordination in bankruptcy cases across national lines are essential to those goals. Not only will investors be more confident in making investments of debt or equity across national borders when there is a coherent system for managing default, but such a system makes it more likely that companies can be sold or restructured in a way that preserves jobs and community values." p. 7.

world explicitly governs the insolvencies of multi-national enterprise groups, nor considers where the coordination center of such an enterprise is located. Multi-national enterprises are, moreover, not restricted to the regions of the world in which the existing international insolvency regimes exist. In general, local insolvency laws do not ensure that the value of the assets of a multi-national enterprise are maximized, because they have as their principal purpose the regulation and protection of local concerns. They provide only limited guidance for courts that seek to coordinate with other jurisdictions to maximize values for stakeholders around the world. In the absence of legislative guidance, national courts have struggled to address the fact-specific needs of insolvent multi-national enterprise groups, and competing claims for jurisdiction over insolvencies have arisen, putting at risk the fundamental goal of value maximization. Additional tools to achieve cooperation and coordination between courts with jurisdiction over the multiple arms of international businesses are needed to facilitate their efficient restructuring or liquidation.

These Guidelines are intended to apply to an enterprise group with operations, assets and employees located in more than one country, which have unified corporate governance, either through common or interlocking shareholding or by contract. The principles may also be of assistance in coordinating the insolvencies of multi-national enterprise groups whose component parts operate with relative independence. These principles are designed to be implemented before the courts take decisive action that may have precedential effect within a multi-national enterprise's insolvency proceedings.

Courts in civil law countries have less discretion than those in common law countries to adopt or implement guidelines such as these without explicit statutory authority, which in most countries does not yet exist. Even where courts are unable to implement these

guidelines as proposed, however, they may endeavour to effectuate the Objectives of these Guidelines within the strictures of existing law.

**DEFINITIONS OF TERMS USED IN THESE GUIDELINES**

**“COMI” means the center of an entity’s main interests.**

**Commentary**

Although the phrase “center of main interest” is used in both the UNCITRAL Model Law on Cross-Border Insolvency (the “Model Law”) and in the European Council Regulation on Insolvency Proceedings, Council regulation 1346/2000, 29 May 2000, 2000 O.J. (L160) (hereafter “EU Regulation”),<sup>2</sup> courts in different jurisdictions have reached different conclusions about the factors and weighting relevant to the identification of an entity’s COMI. *See Eurofood, European Circuit of Justice, Case C -- 341/04 [2006] ECR I-3813; Samuel L. Bufford, International Insolvency Case Venue in the European Union: The Parmalat and Daisytek Controversies,* 12 *Columbia Journal of European Law*, 429 (2006); Samuel L. Bufford, “Center of Main Interests, International Insolvency Case Venue and Equality of Arms: The Eurofood Decision of the European Court of Justice,” *Northwestern Journal of International Law and Business* 351, January 2007. Professor Westbrook questions whether the U.S. and Europe need to have the same interpretation of this central concept in “Locating the Eye of the Financial Storm,” 32 *Brook. J. Int’l L.* 1019 (2007). But even in several insolvencies involving multi-national enterprises within the European Union, competing claims for “main” proceeding status have been made on behalf of members of an enterprise group, leading to several different interpretations of the provisions in Article 3 of the EU Regulation relating to COMI and the meaning and the strength of the presumption that a debtor’s COMI is at its registered office. *Compare, e.g., Eurofoods IFSC Ltd.*, 2006 ECJ CELEX Lexis 777, 206 ECR 1-3813, *Re Daisytek-ISA Ltd. ors.*, [2003] B.C.C. 562, ¶ 14, 2003 WL 21353254 (Ch.D). *In the Matter of Ci4net.com Inc.*, [2005] B.C.C. 277, 2004 WL 2578376, and *BenQ*, discussed in Wessels, *BenQ Mobile Holding BV Battlefield Leaves Important Questions Unresolved*, 20 *Insolvency Intelligence* Nr. 7, August 2007, pp. 103-108.

Courts will of course be bound to apply the factors relevant to COMI determination that are in force in their own jurisdictions.

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<sup>2</sup> The EU Regulation is reproduced at <http://www.iiiglobal.org/component/jdownloads/?task=view.download&cid=417>

**“Multi-national enterprise group” or “enterprise group” means a group of companies or enterprises established or centered in more than one country which are linked together by some form of control, whether direct or indirect, or ownership, by which linkage their businesses are centrally controlled or coordinated.**

**Commentary**

This definition of a multi-national enterprise group is drawn from UNCITRAL’s Working Group V’s Legislative Guide on Insolvency law, Part Three: Treatment of Enterprise Groups in Insolvency, A/CN.9/WG.V/WP.82, ¶¶ 2-17 (September 1 2008) (“UNCITRAL Insolvency Working Group Guide”) and I. Merovach, “The ‘Home Country’ of a Multinational Enterprises Group Facing Insolvency,” ICLQ Vo. 57, April 2008, p 431. Whether a multi-national enterprise in insolvency proceedings should have a single coordination center, as defined below, will depend on the strength of its integration and its central organization.

**“Control” means the capacity to determine, directly or indirectly, the operating and financial policies of an enterprise.**

**Commentary**

This definition of control follows the definition provided in the Glossary prepared by the Secretariat for consideration by UNCITRAL’s Working Group V (Insolvency Law) for the thirty-sixth session of the working group in New York, May 18-22, 2009.

**“Coordination center” means the member of a multi-national enterprise group that can be said to control the group.**

**Commentary**

These materials reflect the drafters’ agreement with Working Group V’s position that it is preferable to avoid use of the term “COMI” in considering coordination of multi-national enterprise group insolvencies, for several reasons.<sup>3</sup> First, the term does not have universal application and is only recognized in nations that have adopted either the Model Law or the EC Regulation. Moreover, as the Working Group has concluded, it would be difficult to reach a definition of the COMI of an enterprise, principally because it would be difficult to agree on what it would mean for an enterprise COMI to be identified. It is unlikely to be feasible to enact local legislation that would expect other nations to defer to an enterprise COMI definition made both locally and unilaterally.

It is, however, important to acknowledge that many if not most multi-national enterprise groups are in fact controlled centrally, and that cross-border insolvencies of multi-national enterprise groups will function more efficiently if they are coordinated under central direction.<sup>4</sup> The concept of a coordination center provides a pathway to the coordination of

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<sup>3</sup> [Proposed] Legislative Guide on Insolvency Law Part Three: Treatment of enterprise groups in insolvency, II.A.¶3, A/CN.9/wG.V/WP.85/Add.1. The Working Group has concluded that it is not necessary to include a recommendation in the Legislative Guide that local insolvency laws expressly recognize a coordination center, for many of the same reasons it previously concluded that it would not be desirable to recognize an enterprise COMI. It is agreed that central coordination of multi-national corporate enterprises should be encouraged, but it is believed that in practice a coordination center will always manifest itself and will, through protocols and other informal extrajudicial arrangements coordinate the global insolvencies.

<sup>4</sup> See also Principle 1 of IBA Committee J Cross-Border Insolvency Concordat: “If an entity or individual with cross-border connections is the subject of an insolvency proceeding, a single administrative forum should have primary responsibility for coordinating all insolvency proceedings relating to such entity or individual,” *quoted in* [Proposed] Legislative Guide on Insolvency Law Part Three: Treatment of enterprise groups in insolvency, II.B.1.¶ 5, A/CN.9/wG.V/WP.85/Add.1.

The Working Group considered that some of the objectives of identifying a coordination center might be:

- (a) to facilitate coordination of multiple proceedings to streamline administration, expedite proceedings and achieve greater efficiency and cost savings;
- (b) to encourage and provide authorization for cooperation between the courts and insolvency representatives involved;
- (c) to facilitate exchange of information on claims, assets and security interests;
- (d) to facilitate better realization of asset values;
- (e) to coordinate provision of post-commencement finance across the group.

[Proposed] Legislative Guide on Insolvency Law Part Three: Treatment of enterprise groups in insolvency, II.B.1.¶ 5, A/CN.9/wG.V/WP.85/Add.1.

proceedings involving multiple members of an enterprise group. Even in the absence of strong central organization, integration and management, a multi-national enterprise may benefit from recognition of a coordination center, in which case the courts may need to balance a number of factors arguably relevant to that determination. In certain cases, and in certain jurisdictions, it may be more appropriate to recognize multiple centers, and to maximize value by coordination of multiple proceedings through protocols rather than through administrative consolidation of those proceedings.

A number of factors, including those listed below, may be relevant in determining (a) whether recognition of a coordination center is appropriate, and if so in what location, or in the alternative (b) whether coordination among courts with jurisdiction over multiple group members is more feasible (subject to existing local law, which may prevent consideration of one or more of these factors).

- A. The location at which high level coordinated economic decisions of the enterprise as a whole are made and from which the enterprise is managed;
- B. The degree of financial integration and interdependence among the members of the group, including the existence of cash management systems, joint borrowing arrangements and/or cross-guarantee provisions;
- C. The degree of business integration and interdependence among the members of the group;
- D. The location or locations whose local law will govern most disputes arising in the enterprise's insolvency proceedings;
- E. Which of the possible coordination center courts can deliver and enforce the most pervasive relief;
- F. The extent of common ownership among members of the group; and
- G. Where ascertainable, creditors' expectations as to where they would enforce their rights.<sup>5</sup>

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<sup>5</sup> The UNCITRAL Working Group V Legislative Guide discusses factors relevant to determining the degree of integration of a group, including "the economic organization of the group (e.g., whether the administrative structure is arranged centrally or maintains the independence of the various members, whether subsidiaries depend on the enterprise group for financing or loan guarantees, whether personnel matters are handled centrally, the extent to which the parent makes key decisions on policy, operations and budget and the extent to which the businesses of the group are integrated vertically or horizontally); how the group manages its marketing (e.g., the importance of intra-group sales and purchases, the use of common trademarks, logos and advertising programmes and the provision of guarantees for the products); and the public image of the group (e.g., the extent to which the group presents itself as a single enterprise, and the extent to which the activities of the constituent companies are described as operations of the group in external reports, such as those for shareholders, regulators and investors." UNCITRAL Working Group V Legislative Guide, ¶ 16.

**“Court-to-Court Communications Guidelines” means the Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases developed by the American Law Institute and International Insolvency Institute.**

*Commentary*

The Court-to-Court Communications Guidelines<sup>6</sup> authorize a court to communicate directly with another court or with an administrator in another jurisdiction to coordinate proceedings before it with foreign proceedings. The court may also permit an administrator it has appointed to communicate with a foreign court either directly or through a foreign administrator, for the same goal. The court may receive communications from foreign courts and foreign administrators, and may respond as appropriate, either directly or indirectly. The court may communicate by sending copies of transcripts, orders or opinions or other documents, by providing notice to parties in interest, by directing counsel or a foreign or domestic administrator to transmit copies of documents, pleadings, affidavits, briefs or other documents filed with the court to the other court, and by participating in telephone or video conference calls, or other electronic means of communication. Court-to-Court Communication Guideline 7 specifies the ways that telephone and video conference calls should proceed, so as to ensure transparency and fairness. It is not intended that these oral communications be *ex parte*; the courts are to ensure that notice is given to parties in interest so that they may participate, and that the calls are transcribed and filed as part of the record in the cases.

The Court-to-Court Communications Guidelines also suggest the possibility of jointly conducted hearings between the courts, and specify the mechanisms by which such joint hearings may be conducted.

The Guidelines have been translated into at least 16 languages, endorsed by a number of courts and professional associations, and adopted in a number of cases.<sup>7</sup>

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<sup>6</sup> The Guidelines are reproduced at <http://www.iiiglobal.org/component/jdownloads/?task=view.download&cid=355>.

<sup>7</sup> See “The Development of Court-to-Court Communications in Cross-Border Cases,” B. Leonard, 17 JBLP 619 at 625-27, 629.IK. To date, the Court to Court Communications Guidelines have been approved by, and/or adopted in, the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, the Toronto Commercial Court, the Supreme Court of Bermuda, the Supreme Court of new South Wales, the Canadian Judicial Council and the Central District of California (by General Order). They have also been adopted pursuant to protocols approved by courts in a number of jurisdictions.

## OBJECTIVES

The objectives of these Guidelines are to, and these Guidelines should be employed to, maximize the value of multi-national enterprise groups in insolvency proceedings and to minimize the cost of those proceedings for the benefit of parties in interest generally.

### GUIDELINE NO. 1

Upon the opening of insolvency proceedings against, or a petition for relief by or against, a debtor that is a member of a multi-national enterprise group, where authorized under local law, the court should give notice and an opportunity to be heard to all members of the enterprise group and other affected parties before determining the debtor's COMI or taking actions possibly detrimental to the enterprise group as a whole, or should reserve the determination of the debtor's COMI until such determination is necessary for the purposes of the case before the court.

#### Commentary

The COMI decision for members of an enterprise group, and other initial decisions respecting a member of an enterprise group, should be made on the basis of information, and argument where requested by the court, respecting the member's relationship to the enterprise group, even if no other insolvency proceeding respecting the enterprise group has yet been initiated.

While it is important for all members of the enterprise group to receive notice, the court should exercise its discretion in determining which additional parties should also receive notice. Where more than one insolvency proceeding has been initiated, the court may, where appropriate and where permitted by local law, first apply Guideline 2C and defer a COMI decision to afford the parties an opportunity to develop a consensual protocol that addresses jurisdictional and administrative issues.

The Model Law,<sup>8</sup> Chapter 15 of the United States Bankruptcy Code and the NAFTA Principles<sup>9</sup> require the debtor or its insolvency representative to provide the courts with updates on related foreign insolvency proceedings. Article 31 of the EU Regulation directs insolvency representatives in main and secondary proceedings to cooperate closely with one another, principally by exchanging information. The Court-to-Court Communications Guidelines suggest methods with which courts may communicate among themselves about cross-border matters. Many courts should accordingly be comfortable with the concept of

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<sup>8</sup> The Model Law is reproduced at <http://www.iiiglobal.org/component/jdownloads/?task=viewcategory&catid=399>

<sup>9</sup> The Principles of Cooperation Among the NAFTA Countries developed by the American Law Institute, are reproduced at <http://www.iiiglobal.org/component/jdownloads/?task=view.download&cid=355>

obtaining and providing such communications. This Guideline contemplates that the courts will require such communications even if the debtors or their representatives fail to offer them voluntarily, to ensure coordination between insolvency proceedings involving members of a multi-national enterprise group.

Courts with jurisdiction over insolvent enterprises with multiple COMIs may wish to consider the applicability of the NAFTA Principles, and specifically those guidelines relevant to enterprise groups. The European Communication and Cooperation Guidelines for Cross-border Insolvency,<sup>10</sup> proposed by a group of academics and practitioners, and supported by several judges, may also be helpful, as may the IBA Committee J Cross-Border Insolvency Concordat.

Some Courts, particularly in civil law jurisdictions, may feel that they are restricted from ordering that notice be given to entities that are not direct parties to the local proceedings filed before them. Such Courts may wish to consider whether other statutory provisions may justify the provision of such notice. For example, section 5 of the German Insolvency Act directs the court to investigate all circumstances relevant to the proceedings, which could provide support for providing notice to enterprise group members that have no direct standing in the local case. Similarly, various provisions of the EU Regulation may permit a local court to permit practices legal in another state with concurrent jurisdiction over the debtor, even if not explicitly authorized in the local state. See, e.g., Article 38.

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<sup>10</sup> The text of the European Communication and Cooperation Guidelines for Cross-border Insolvency is included in an article located at <http://bobwessels.nl/wordpress/wp-content/uploads/2007/09/icr-editorial-oct-07.pdf>.

**GUIDELINE NO. 2**

As soon as practicable in the conduct of a case concerning a member of a multi-national enterprise group, where permitted by local law and subject to Guideline No. 3, the court may, after (i) requiring the debtor to give notice to the other members of the enterprise group and other affected parties, (ii) affording the relevant representative of the group an opportunity to be heard, and (iii) making any appropriate communication with other courts presiding over insolvency proceedings involving members of the enterprise group:

A. Determine the coordination center of the enterprise and grant standing to a representative of the coordination center to be heard on all matters affecting the enterprise group.

B. Where insolvency proceedings have been commenced by or against more than one member of a multi-national enterprise group, and where appropriate to advance the Objectives of these Guidelines, refer to the court with jurisdiction over the coordination center, or abstain from making, any decisions appropriate to be made by that court.

C. Appoint and direct a representative of the coordination center to enter into a protocol with other members of the enterprise group that furthers the objectives of these Guidelines.

**GUIDELINE NO. 3**

**The court shall not be required to take one or more of the steps required by sub-paragraphs A, B and C of Guideline 2, if after providing the notice and opportunity to be heard described in Guideline 2, the court determines that it is more appropriate to maximize value by coordination of multiple proceedings through protocols rather than administrative consolidation of those proceedings under one coordination center.**

**Commentary**

The standing of the coordination center representative contemplated in Guideline 2A, the deference to the coordination center contemplated by Guideline 2B, and the coordinating protocol contemplated by Guideline 2C are not intended to alter current local law. Where current local law does not otherwise allow, as may generally be the case in civil law jurisdictions, the standing of a coordination center representative will be limited to the right to be heard. Similarly, current local law may limit the court's deference to the jurisdiction and the scope of a coordinating protocol, as well as the court's ability to direct the parties to enter into protocols. In the absence of express authority for the court to make these directions, however, the court may be able to permit the representatives to undertake these cooperative efforts on their own. Indeed, the EU Regulation expressly directs insolvency representatives in main and secondary proceedings to coordinate and communicate. Encouraging the development of coordinating protocols may fall within this provision.

Multi-national enterprises are by definition subject to centralized control or coordination. Even if multiple administrators have been appointed to oversee insolvency proceedings in multiple local jurisdictions, it will be beneficial to the preservation of value for the enterprise if a single spokesperson for the enterprise is recognized in all courts with jurisdiction over the component parts of the enterprise. To be effective in facilitating the development of the protocol, the independent officer should be acceptable to the parties in interest and of a recognized stature in the international insolvency community. It may be advisable for a central listing of persons who have performed this task in the past, or who are widely recognized as capable of performing the task in the future, to be generated and maintained by one or more of the organizations concerned with international insolvencies. Recognition of the standing of such a spokesperson to be heard in all such courts, however, is distinct from a requirement that the national courts defer to a central coordination center court, if such deference is contrary to local law.

Courts and parties in interest should consider protocols as a fundamental and primary tool for facilitating cross-border multi-national enterprise insolvencies. Where courts are not authorized by local law to direct parties to enter into protocols, they may wish to examine the governing laws for authority to permit or encourage the development of protocols.

Protocols may address procedural and administrative issues. They may also reflect consensus concerning the enterprise's corporate governance while in insolvency proceedings (see discussion below regarding the usefulness of corporate governance protocols in the context of competing coordination center decisions), and they may establish dispute

resolution mechanisms. They may reflect agreement among the parties in interest on matters of substance, such as coordination centers, and which courts should exercise jurisdiction over what matters and assets. Finally, they may recite agreement, made either before or after the commencement of proceedings, to submit certain trans-national issues to binding arbitration.<sup>11</sup>

Insolvency professionals should consider negotiating protocols with the significant parties in interest before insolvency proceedings are commenced, whenever feasible.

If multiple courts could legitimately exercise jurisdiction over assets or property of entities in the enterprise group, as may often be the case, the parties should attempt to agree on which court should most properly exercise jurisdiction with respect to particular matters.

The national courts of the coordination center may not have jurisdiction over all assets of the enterprise. In cooperation with the relevant national courts having control of asset segments, where not in conflict with governing law such as the EU Regulation, the national courts of the coordination center may apply one or more of the following choice of law principles:

(a) The court with jurisdiction over the coordination center will apply the avoiding powers of the jurisdiction with the greatest contacts to the challenged transaction;

(b) With respect to interests in property, the court with jurisdiction over the coordination center will apply, as applicable, (1) the UN Convention on Assignment of Receivables in International Trade, (2) the UNCITRAL Legislative Guide on Secured Transactions; or (3) the law of the nation where the property is located;

(c) The court with jurisdiction over the coordination center will recognize and defer to the national laws and national courts regarding taxation over assets within the national court's jurisdiction;

(d) The court with jurisdiction over the coordination center will apply the law of the nation where employees of the enterprise are employed to issues affecting the employees;

(e) The court with jurisdiction over the coordination center will apply to a contract in dispute the non-bankruptcy law of the nation that is specified in the contract ;

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<sup>11</sup> The International Insolvency Institute has collected all known cross-border protocols on its website at <http://www.iiiglobal.org/component/jdownloads/?task=viewcategory&catid=574>. See also Draft UNICTRAL Notes on cooperation, communication and coordination in cross-border insolvency proceedings, A/CN.9/WG.V/WP.86.

(f) The court with jurisdiction over the coordination center will determine choice of law issues, and may defer to a national court whose law applies for determinations on the merits, provided a proceeding has been instituted in that nation; and

(g) Unless appropriate to preserve or enhance the going concern value of the enterprise for the benefit of parties in interest generally, the court with jurisdiction over the coordination center will not consolidate value or assets from multiple locations until (i) the creditors in that forum are paid in full under the provisions of local law, or (ii) the creditors in that forum agree.

**GUIDELINE NO. 4**

**The courts should employ the Court-to-Court Communications Guidelines to the fullest extent appropriate and permissible under local law in order to harmonize court proceedings and rulings in furtherance of the objectives of these Guidelines.**

**Commentary**

The Court-to-Court Communications Guidelines<sup>12</sup> authorize a court to communicate directly with another court or with an administrator in another jurisdiction to coordinate proceedings before it with foreign proceedings. The court may also permit an administrator it has appointed to communicate with a foreign court either directly or through a foreign administrator, for the same goal. The court may receive communications from foreign courts and foreign administrators, and may respond as appropriate, either directly or indirectly. The court may communicate by sending copies of transcripts, orders or opinions or other documents, by providing notice to parties in interest, by directing counsel or a foreign or domestic administrator to transmit copies of documents, pleadings, affidavits, briefs or other documents filed with the court to the other court, and by participating in telephone or video conference calls, or other electronic means of communication. Guideline 7 specifies the ways the telephone and video conference calls should proceed, so as to ensure transparency and fairness. It is not intended that these oral communications be *ex parte*; the courts are directed to ensure that notice is given to parties in interest so that they may participate, and that the calls are transcribed and filed as part of the record in the cases.

The Guidelines also suggest the possibility of jointly conducted hearings between the courts, and specify the mechanisms by which such joint hearings may be conducted.

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<sup>12</sup> The Guidelines may be found at [http://www.iiiglobal.org/component/option,com\\_jdownloads/Itemid,790/task,viewcategory/catid,394/](http://www.iiiglobal.org/component/option,com_jdownloads/Itemid,790/task,viewcategory/catid,394/).

**GUIDELINE NO. 5**

**Where consistent with local law, the courts should require the parties to establish a web site on which all pleadings in all jurisdictions are available to all parties at no cost to creditors, on which news of the cases can be posted for the benefit of all creditors, and which can facilitate communication among representatives of members of the enterprise as well as among creditors. In multi-language cases the courts should require that key documents be translated.**

**Commentary**

Translating pleadings may be expensive, but the costs will often be offset by the gains in maximizing values. Where permitted under local law, the courts may allocate the costs of translation among the parties as is appropriate under the particular circumstances. It may prove efficient to coordinate the translation process so that there is common understanding of how commonly used terms will be translated throughout a case. Where local law does not permit the court to order the parties to establish a web site, it still may be permissible for the court to encourage this or other means by which creditors and other parties in interest may obtain effective notice of events in related foreign proceedings.