

美国法学会
及
国际破产学会

适用于跨国界案件法院间交流的指引

美国法学会

于 2000 年 5 月在华盛顿

采纳并发表于

国际破产：北美自由贸易协定成员国合作原则

及

国际破产学会

于 2001 年 6 月在纽约

采纳



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*跨国界案件法院间交流的指引*由美国法学会作为其国际破产项目的一部分进行开发。该指引在跨国界案件中的使用得到特别的许可以及鼓励。本翻译文本的制作、出版及发行经美国法学会授权。美国法学会及国际破产学会对海陆国际律师事务所陆志明律师以及温嘉旋律师提供本翻译文本，宾夕法尼亚大学法学博士候选人黄奇葦小姐协助审阅本翻译文本，表示感谢。

在国际破产学会网站 <http://www.iiiglobal.org/international/guidelines.html> 可查找到英语以及中文、法语、德语、意大利语、日语、韩语、葡萄牙语、俄语、瑞典语、以及西班牙语的指引文本。

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序

2000年5月，美国法学会最终批准了国际破产项目的工作。该项目包括了曾一度因考虑到新颁布的墨西哥破产法典而被推迟交付出版，但于2003年终于得以出版的四册书，书名为：*国际破产：北美自由贸易协定成员国合作*。这些书包括了该项目首要阶段的内容，即分别阐述了加拿大、墨西哥以及美国的破产法律，还包括了该项目高潮阶段的内容，即包含有*北美自由贸易协定成员国合作原则*的一册书。所有这些书都是来自该北美自由贸易协定三个成员国的法律汇编者以及顾问的共同努力的结晶，也是国际合作前景的反映。这些书由Juris 出版公司出版，可以通过美国法学会网站(www.ali.org)订购。

适用于跨国界案件法院间交流的指引，是我们在*北美自由贸易协定成员国合作原则*这一册书的编著工作中产生的副产品，最早是作为那册书的附录B出现，之后和其他几册书一起于2000年得到美国法学会的批准。但是，在*原则*之外，*指引*也扮演了一个重要而关键的角色，它被翻译成各种文字，广泛散布，被法院引用以及应用，并分别得到国际破产学会以及加拿大破产学会的批准。尽管这些书最初是自一个项目发展而来（该项目旨在促进北美自由贸易协定成员国破产法院之间的合作），这些书能被国际破产学会接受（国际破产学会的成员包括来自于40多个国家破产法庭的领头人），这表明，这些书的相关性及适用性是远远超出北美自由贸易协定之范围的。确实，没有理由将*指引*仅限制于破产案件；在重叠性诉讼中涉及到法院间合作而需要明智而协调的标准时，他们的有用性就会被得以证明。比如，参见，美国法学会，国际司法管辖权及裁判项目 § 12(e) (2003年暂行稿)。

美国法学会对国际破产学会一直以来为*指引*的宣传并使世界范围内更多的法官和律师了解*指引*而付出的努力表示感谢；对国际破产学会主席，加拿大多伦多的E. Bruce Leonard表示感谢，他作为国际破产项目的加拿大法律共同汇编者，是*指引*英文稿的主要起草人，并主要负责*指引*被翻译成目前面世的其他多种文字的统管工作；并对译者表示感谢，是他们的工作使得*指引*得到更广泛的理解。我们希望这些新的英文版以及双语版对我们日益全球化的世界上各个法院和法律体系之间开展更好的沟通和理解能够有所帮助。

LANCE LIEBMAN
会长
美国法学会

2004年1月30日

国际破产学会

介绍

国际破产学会，全球主要的破产专家、法官、学者及管理者的世界范围内的联合会，在此很高兴地推荐可以在跨国案件以及国际案件中采纳和适用的美国法学会的*跨国案件法院间交流的指引*。该指引已经过国际破产学会委员会的审阅和研究，并且得到了2001年6月在美国纽约举行的国际破产学会年会上各成员的一致批准。

自得到国际破产学会的批准以来，指引已经在一些跨境案件中得以应用，并在协调方面取得了相当的成功。对牵涉入国际案件的所有债权人的债权维护来说，协调是非常必要的。国际破产学会毫无保留地推荐破产专家和法官在跨境案件的最初阶段采纳指引，这样，在法院有需要彼此交流的任何时候，比如，在一个法院的行动可能对另一法院的处理事项产生冲击的任何时候，都可以使用指引。

尽管指引是自破产项目发展而来，但诉讼专家和法官已经注意到指引对涉及到两个或两个以上法院的国际案件也具有相同的价值和建设性。实际上，在多管辖权诉讼中，在涉及到几个法院的案件中，指引将会产生更大的积极效果。指引要求所有的国内实践和程序相一致，指引不会修改或影响当事人的实体权利，也不会给予任何一方优于另一方的有利条件，领会到这一点非常重要。

国际破产学会对其各成员表示感谢，他们对指引被翻译成法语、德语、意大利语、韩语、日语、汉语、葡萄牙语、俄语以及瑞典语进行了安排工作；对美国法学会将指引翻译成西班牙语表示感谢。另外，国际破产学会对美国法学会、加拿大破产学会、美国破产学院以及加拿大安大略省最高法院商业委员会的慷慨的经济支持表示感谢，他们的支持使得双语版的指引能在全球主要的国家得以出版和发行。

若有读者对应用了指引的案件有所了解，我们希望您能够向国际破产学会提供有关案件的细节（传真：416-360-8877；电邮：info@iiglobal.org），以使每个人都能从指引的采纳及应用之经验和积极成效中受益。您可以在国际破产学会地网站 www.iiglobal.org 了解指引的持续进展及应用了指引的案件。

国际破产学会及其所有成员非常高兴在指引的发展及成功过程中有所参与，对美国法学会开发指引并对指引向全球范围的破产专家、法官、学者及管理者的发行提供经济支持深表赞许。指引在国际案件中的使用将引导国际破产及重整向好的方向发展，破产社团应当将这归功于使之成为可能的美国法学会的灵感和洞察力。

E. BRUCE LEONARD
主席
国际破产学会

多伦多，安大略省
2004年3月

法官序言

我们相信法院间的合作与协调将有利于涉及多国破产和重整案件的各方当事人。在国际诉讼中法院之间交流的益处已经在联合国通过联合国国际贸易法委员会提出的*跨国界破产示范法*中得以确认，并于1997年得到联合国大会的认可。2002年对欧盟成员国生效的*欧盟破产诉讼条例*中也对交流的好处予以确认。

*跨国界案件法院间交流的指引*自美国法学会的国际破产项目发展而来，该项目涉及北美自由贸易协定成员国——墨西哥、美国及加拿大。*指引*已经得到美国法学会成员以及国际破产学会（该学会的成员遍布全球的40多个国家）的认可。每一个国家都是独一无二，各具特色的，每一个国家亦都有其引以为自豪的法律传统以及法律思想。*指引*并非旨在对任何一个国家所适用的国内规则或程序进行修改或变更，也并非旨在影响或者削减法院诉讼中任何一方当事人的实体权利，而是旨在在遵守涉及法院的所有适用规则及程序的同时，鼓励国际案件中的合作并提供便利。

在个别案件中，*指引*或许会被修改，以符合有关司法辖区的程序法规定或者其他特殊情形，以使法院间能就国际破产或清算进行最大程度的合作。而且，*指引*并不局限于破产案件，在处理涉及到多个国家的非破产案件中亦会有所帮助。我们一些法官已经在跨国界案件中使用*指引*，我们鼓励国际案件中的各方当事人以及律师对在他们的案件中适用和执行*指引*的好处加以考虑。

2004. 4.

David Baragwanath
Justice
High Court of New Zealand
Auckland

Donald I. Brenner
Chief Justice
Supreme Court of British
Columbia
Vancouver

Sidney B. Brooks
Judge
United States Bankruptcy Court
District of Colorado
Denver

Charles G. Case, II
Judge
United States Bankruptcy Court
District of Arizona
Phoenix

Miodrag Dordević
Justice
Supreme Court of Slovenia
Ljubljana

J.M. Farley
Justice
Ontario Superior Court of Justice
Toronto

James L. Garrity, Jr.
Former Judge
United States Bankruptcy Court
Southern District of New York
New York

Paul R. Heath
Justice
High Court of New Zealand
Auckland

Burton R. Lifland
Judge
United States Bankruptcy Court
Southern District of New York
New York

George C. Paine II
Chief Judge
United States Bankruptcy Court
Middle District of Tennessee
Nashville

Adolfo A.N. Rouillon
Justice
Court of Appeal
Rosario, Argentina

Wisit Wisitsora-At
Former Justice
Civil and Commercial Court
Bangkok, Thailand

Allan L. Gropper
Judge
United States Bankruptcy Court
Southern District of New York
New York

Hyungdu Kim
Judge
Seoul High Court
Seoul, Korea

Gavin Lightman
Justice
Royal Courts of Justice
London

Chiyong Rim
Judge
District Court
Western District of Seoul
Seoul, Korea

Shinjiro Takagi
Former Justice
Supreme Court of Japan
Tokyo

R.H. Zulman
Justice
Supreme Court of Appeal
of South Africa
Parklands

跨境案件法院间交流指引

我们很高兴能为美国法学会/国际破产学会之*跨境案件法院间交流指引*提供以下翻译。正如您所感知的，*指引*的目标在于提供一个能在国际范围内被接受的，跨境案件以及国际案件法院间相互交流所依据的标准。

*指引*已经在一些国际案件中得到应用，为案件所涉及的债权人获得了有利结果。每个人都会意识到，涉及到两个以上国家的案件中合作和协调总是比没有经过协调能够获得更好的结果。

我们很高兴也很荣幸能够建议在涉及到两个以上国家的所有案件中采纳并应用*指引*。若有读者涉及到应用了指引的案件或者有读者对应用了指引的案件有所知晓，希望能够将案件细节告知以下署名者（传真：852-2292-2000；电邮：sluk@hewm.com 及 cwen@hewm.com）以及国际破产学会（传真：416-360-8877；电邮：info@iiiglobal.org）。大家对本次意义重大的国际破产方面的倡议所表现的关注，我们表示感谢。

陆志明

温嘉旋

2004. 4.

适用于跨国界案件法院间交流的指引

引言:

跨境案件中的合作最基本的要素之一在于案件涉及国家的行政机关之间的交流。破产及重组诉讼程序中，法院是很重要的，因此，主管法院能否协调各法院的活动以确保遭遇财政麻烦的企业的破产财产保管人最大程度地受益就更显得重要了。

本指引旨在通过涉及到的法域之间的交流，加强涉及到多个国家的破产诉讼过程的协调。不管怎样，法官与一个外国国家的法官或行政官员的直接交流会产生是否可信以及程序是否适当方面的问题。仅此就可能对诉讼当事人产生利害冲突，除非交流的过程是完全透明而且非常公正的。因此，在跨境案件中法院之间的交流要比国内案件更为重要，也更为敏感。本指引鼓励法院间通过透明的程序进行交流。指引旨在确保程序恰当的同时允许就破产案件进行快速的合作。

如果一个法院有意应用本指引---部分或全部，有所保留或毫无保留，该法院在应用指引之前应当先正式采纳指引。法院或许只是希望在有关事项所涉及到的其他法院采纳指引的时候才采纳指引。采纳指引的法院可能会以与采纳指引的其他法院基本相似的方式去采纳指引，以确保法官、律师及当事人遵从相同的行动标准。

法院要在适当告知当事人和律师之后才能采纳指引，就像在类似情况下，有关重要的程序性决定应当按照地方法程序进行适当告知一样。在时间紧迫的情况下，可以适用于紧急情况的地方程序，包括告知要求。比如，先采纳指引，稍后再进一步考虑。有关有权得到告知的当事人（比如，所有诉讼当事人或当事人代表或律师代表）以及法院的异议决定的性质（比如，是否举行听证会）的问题由各个法域的程序规则加以规定，本指引中并无提及。

本指引并非一成不变的，而是可以修改、变更以符合个别案件的特别情况的，在国际破产社团积累经验后还可以对指引加以修改及发展。应用指引必须以符合地方法程序以及地方道德要求的方式。指引并无提及告知与程序的细节，这些细节需要依据各个法域的法律及实践。不管怎样，指引对有效、公平地处理跨境破产事宜来说可能是非常有用的。因此建议应用本指引，以及为符合个别案件的特别情况而进行适当的修改。

指引 1

除非在紧急情况下，在与另一法院交流之前，法院应当确认该等交流符合其国内所有适用的程序规则。法院有意应用本指引时（部分或全部，有所保留或毫无保留），在应用指引之前应当先正式采纳指引。法院之间需要进行指引的协调，各个法院的官员可以根据指引 8(d)就指引的应用和实施进行沟通。

指引 2

法院可以与另一法院就在其法院进行的诉讼程序的有关事宜进行交流，以对其法院进行的诉讼程序以及在其他法域进行的诉讼程序进行协调。

指引 3

法院可以与另一法域的破产行政官员或者该法域的经授权的法院代表就在其法院进行的诉讼程序和在该法域进行的诉讼程序之间的协调问题进行交流。

指引 4

经外国法院的同意，法院可以允许经适当授权的破产行政官员根据法院认为适当的条款与外国法院进行直接交流，或者通过该外国法域的破产行政官员进行交流，或者通过外国法院的授权代表进行交流。

指引 5

法院可以接受外国法院或者外国法院的授权代表或者外国破产行政官员的通信，并且应当对外国法院的通信进行直接回复（根据指引 7，双向交流的指引）；根据单方面交流的地方规则，对外国破产行政官员的通信可以进行直接回复或者通过法院的授权代表或者通过经适当授权的破产行政官员进行回复。

指引 6

可以由法院或者通过法院进行法院之间的交流：

- (a) 将正式判令、裁判、意见、裁定理由、背书、诉状副本或者其他文件直接发送或传送至其他法院，并且以法院认为合适的方式提前通知相关当事人的律师；
- (b) 以适当方式指示律师或外国/国内破产行政官员将法院备案的或将备案的文件、诉状、口供书、事实陈述书、概要或其他文件发送或递送至其他法院，并且以法院认为合适的方式提前通知相关当事人的律师；
- (c) 通过电话或者电视会议或者其他的电子方式，与其他法院一起参加双向交流。此情形适用指引 7。

指引 7

除非两个法院之间另有指示，法院之间根据指引 2 和指引 5 通过电话或者电视会议或者其他的电子方式进行交流的情况下：

- (a) 在交流期间，所有相关当事人的律师应当有权亲自参与，并且，应当根据每一个法院适用的程序规则将交流事宜提前通知所有当事人；
- (b) 法院之间的交流应当做好记录工作，也可以将交流资料改录成其他形式。经两个法院一致同意，可以将交流改录成书面形式，并且，该书面记录应当被看作该交流的正式记录；
- (c) 交流的记录、按照任一法院指示进行的交流的改录，以及从记录改录而成的正式记录，应当作为诉讼记录的一部分加以备案，并且按照双方法院认为合适的有关保密性方面的指示允许双方法院中各方当事人的律师查阅；以及
- (d) 法院之间进行交流的时间和地点应当由双方决定。各法院中法官之外的人员可以无需律师的参与相互之间充分交流，以对交流做出适当的安排，除非任一法院另作指示。

指引 8

在法院与外国法院授权代表或者外国破产行政官员按照指示 3 和指示 5 通过电话或者电视会议或者其它电子方式进行交流的情况下，除非法院另作指示：

- (a) 在交流期间，所有相关当事人的律师应当有权亲自参与，并且，应当根据每一个法院适用的程序规则将交流事宜提前通知所有当事人；
- (b) 交流应当做好记录工作，也可以将交流资料改录成其他形式。经法院同意，可以将交流改录成书面形式，并且，该书面记录应当被看作该交流的正式记录；
- (c) 交流的记录、按照法院指示进行的交流的改录，以及从记录改录而成的正式记录，应当作为诉讼记录的一部分加以备案，并且按照法院认为合适的有关保密性方面的指示允许另一法院或者双方法院中各方当事人的律师查阅；以及
- (d) 进行交流的时间和地点应当由法院决定。法院中法官之外的人员可以无需律师的参与同外国法院的授权代表或者外国行政官员进行充分交流，以对交流做出适当的安排，除非法院另作指示。

指引 9

法院可以同另一法院一起举行共同听证会。除非另有指示或者该等共同听证会适用的任何先前已达成之协议中另有规定，有关该等共同听证会应当适用下列指引：

- (a) 每一个法院应当可以同时参加另一法院举行的诉讼听证。

- (b) 在听证会举行之前，一个法院备案的或将备案的证据材料或者其他书面材料应当按照该法院的指示，发送至另一法院，或者通过公众系统以电子方式传送。该等材料向另一法院的发送或者通过电子系统传送不会令在该法院将材料备案的那一方当事人受限制于另一法院的司法管辖。
- (c) 任何一方当事人代表提交材料或者提出申请只能向该拟提交材料的代表出庭的法院提出，除非另一法院给与该代表特别的许可而向其提交。
- (d) 受限于指示 7(b)，法院应当有权在共同听证会举行之前同另一法院进行交流，律师可以在场或者不在场，以确定使得材料提交以及法院做出决定能够有序进行的指引，并且对有关共同听证会的程序方面、管理方面或者初步出现的问题加以协调和解决。
- (e) 受限于指示 7(b)，法院在共同听证会举行之后，应当有权同另一法院进行交流，律师可以在场或者不在场，以决定经协调的判令是否可以由双方法院作出，以及对有关共同听证会的程序方面或者非实体方面的问题加以协调和解决。

指引 10

法院应当承认并接纳在另一法域的适用于诉讼程序的法规条文、法定或行政条例及一般的法院规则的有效性而无需作进一步的证明或例证（除非在有实质理据的反对下而需就该等反对的程度而作出）。

指引 11

法院应当接纳（除非在有实质理据的反对下而需就该等反对的程度而作出）在另一法域的诉讼程序作出的判令是于其有关期日正式地和恰当地作出的及该等判令无需作出进一步的证明或例证（受限于法院认为恰当而作出的所有关于就该等判令而言待决的上诉或审核诉讼的适当保留）。

指引 12

法院可以通过设立一份送达清单来对在其法院进行的诉讼程序和另一法域进行的诉讼程序进行协调，该清单可以包括有权接受在其他法域进行诉讼程序的通知的当事人（“非居民当事人”）。所有与在法院进行的诉讼程序相关的通知、申请、请求以及其他材料可以被命令通过电子公众系统或者传真、挂号邮件或者快件，或者通过法院按照法院适用的程序作出指示的其他方式向非居民当事人提供或者送达。

指引 13

法院可以签发判令或者签发指示，允许外国破产行政官员或者在另一法域进行的诉讼程序中的债权人代表或者另一法域的法院的授权代表出庭并且由法院进行听证，不受限于法院的法域问题。

指引 14

法院可以作出指示，在其法院进行的对当事人产生影响的诉讼程序过程中的任何阶段，受法院进一步判令的限制，对在另一法院进行的诉讼程序中的该等当事人的申请或者请求不适用，或者可以作出指示给与法律救济，允许该等当事人以其认为合适的条款与条件向另一法院提出该等申请或者请求。如果向法院提出的申请或者请求对在另一法域的法院处理的事宜或者进行的诉讼程序产生影响或者可能产生影响，法院之间可以按照指引 6 和指引 7 进行交流。

指引 15

法院可以与另一法域的法院或者该法院的授权代表以本指引中所述之方式进行交流，以对在其法院进行的诉讼程序以及在另一法域进行的诉讼程序进行协调，不管在其法院或在另一法院进行的诉讼程序采取什么方式，只要诉讼程序中存在相同的问题及/或当事人。反过来说，在缺少令人信服的理由的情况下，应司法公正的要求，法院也应当与另一法域的法院进行该等交流。

指引 16

法院根据本指引签发的指示受法院为上述目的而进行的修正、变更以及被认为恰当的扩充的限制，并且反映在法院和另一法院进行的诉讼程序中不时出现的变化和发展。任何指示都可以不时进行补充、变更以及重申，该等变更、修正以及重申应当经双方法院接受才生效。如果一个法院未经双方法院一致同意而有意对根据本指引签发的指示进行补充、变更或者取消，该法院应当在合理的时间之前将其意愿通知另一法院。

指引 17

本指引中所做的安排不构成法院任何权利、责任或者授权的妥协或者放弃，也不构成对法院或者另一法院发生的任何争议问题的实质性决定，也不构成任何当事人对其实体权利及主张的放弃或者对法院或另一法院所作出的法令效果的削弱。

Guidelines

Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.
- (c) Submissions or applications by the representative of any party should be made only to the Court in which

the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that

Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction (“Non-Resident Parties”). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified,

and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

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