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Chapter 15

Craig Martin, Moderator

DLA Piper; Wilmington

Robin Chiu

Goldin Associates, LLC; New York

Lynn P. Harrison, III

Curtis, Mallet-Prevost, Colt & Mosle LLP; New York

Margot MacInnis

Grant Thornton LLP; Grand Cayman, Cayman Islands

Hon. Christopher S. Sontchi

U.S. Bankruptcy Court (D. Del.); Wilmington

**GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN
COURTS IN CROSS-BORDER INSOLVENCY MATTERS**

INTRODUCTION

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.
- B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
 - (i) the efficient and timely coordination and administration of Parallel Proceedings;
 - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
 - (iii) the identification, preservation, and maximisation of the value of the debtor’s assets, including the debtor’s business;
 - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
 - (v) the sharing of information in order to reduce costs; and
 - (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties¹ in Parallel Proceedings.
- D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit².
- E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.
- F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

¹ The term “parties” when used in these Guidelines shall be interpreted broadly.

² Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, “administrator” includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order³, following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

³ In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of 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 any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

- (i) 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.
- (ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, 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.
- (iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.
- (iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.
- (iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other 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.

2019 DELAWARE VIEWS FROM THE BENCH

Judicial Insolvency Network (Conference: 10–11 October 2016)

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and 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. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish any court’s respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.
- (v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.
- (vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures 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.
- (vii) A 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 outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

EXHIBIT 1

Cross- Border Protocol

01:19517497.1

Cross-Border Restructuring Protocol

**Between the United States Bankruptcy Court for the District of Delaware
(Case No. 16-12373 (KJC)) and the Ontario Superior Court of Justice (Court File No.
CV-16-11582-00CL)**

This cross-border insolvency protocol (the **Protocol**) shall govern the conduct of all parties in interest in the Restructuring Proceedings (as such term is defined herein).

The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the **Guidelines**) attached hereto as Schedule **A** are hereby incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall govern.

A. Background

1. Performance Sports Group Ltd. (**PSG**), a company incorporated in the Province of British Columbia, is the ultimate parent company of an international enterprise that designs, develops and manufactures high performance sports equipment and related apparel through its various subsidiaries and affiliates in the United States of America (the **U.S.**), Canada and other countries. On October 31, 2016 (the **Filing Date**), PSG and its direct and indirect subsidiaries listed on Schedule **B** (collectively, the **Debtors**) commenced cases (the **Chapter 11 Cases**) under chapter 11 of title 11 of the United States Bankruptcy Code (the **Bankruptcy Code**) in the U.S. in the United States Bankruptcy Court for the District of Delaware (the **U.S. Court**) and commenced a reorganization proceeding in Canada (the **Canadian Proceeding**) and together with the Chapter 11 Cases, the **Restructuring Proceedings**) by filing an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (the **CCAA**) with the

Ontario Superior Court of Justice (the **≈Canadian CourtΔ** and together with the U.S. Court, the **≈CourtsΔ** and each individually, a **≈CourtΔ**).

2. On the Filing Date, the Canadian Court issued an Order (as may be amended from time to time, the **≈Initial OrderΔ**) which, *inter alia*: (a) granted the Debtors relief under the CCAA; (b) appointed Ernst & Young Inc. as monitor of the Debtors (in that capacity, the **≈MonitorΔ**), with the rights powers, duties and limitations upon liabilities set forth in the CCAA and the Initial Order; and (c) granted a stay of proceedings in respect of the Debtors.

3. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession under the supervision of the Courts pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the CCAA and the Initial Order. In connection with the Restructuring Proceedings, a Superpriority Debtor-In-Possession Term Loan Credit Agreement dated as of October 31, 2016, was entered into between the Debtors and 9938982 Canada Inc. and the other lenders party to such agreement (collectively, the **≈Term Loan DIP LendersΔ**).

4. The Office of the United States Trustee (the **≈U.S. TrusteeΔ**) has appointed an official committee of unsecured creditors (the **≈Creditors' CommitteeΔ**) in the Chapter 11 Cases.

B. Purpose and Goals

5. While the Chapter 11 Cases and the Canadian Proceeding are full and separate proceedings pending in the U.S. and Canada, the implementation of administrative procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Restructuring Proceedings, protect the rights of parties thereto, ensure the maintenance of each Courts respective independent

jurisdiction and give effect to any applicable doctrines, including, comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Restructuring Proceedings:

- a. harmonize and coordinate activities in the Restructuring Proceedings before the Courts;
- b. promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- c. honor the independence and integrity of the Courts and other courts and tribunals of the U.S. and Canada, respectively;
- d. promote international cooperation and respect for comity among the Courts, the Debtors, the Creditors' Committee, the U.S. Representatives (defined below), the Canadian Representatives (defined below), the U.S. Trustee, the Term Loan DIP Lenders and other creditors and interested parties in the Restructuring Proceedings;
- e. facilitate the fair, open and efficient administration of the Restructuring Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and
- f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Restructuring Proceedings.

As the Restructuring Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Restructuring Proceedings should be dealt with under and in accordance with the principles of this Protocol. Subject to the provisions of this Protocol, where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion while considering principles of comity, either (i) render a binding

decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or part, to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Courts and the Canadian Courts respective independent jurisdiction of the subject matter of the Chapter 11 Cases and the Canadian Proceeding, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors, the Canadian Representatives (as defined below), the U.S. Representatives (as defined below), nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the U.S. or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Cases and the hearing and determination of matters arising in the Chapter 11 Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceeding and the hearing and determination of matters arising in the Canadian Proceeding.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

- a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the U.S. or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or *limited notice* basis;
- b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the U.S.;

- c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada or the laws of the applicable Province therein;
- d. require the U.S. Representatives, the Canadian Representatives (collectively, the **≈Estate RepresentativesΔ**), the Debtors, the Monitor, the Creditors» Committee, or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or
- f. preclude the Debtors, the Monitor, the Creditors» Committee, the Estate Representatives, the U.S. Trustee, the Term Loan DIP Lenders, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the U.S., Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

9. The Debtors, the Creditors» Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them by the Bankruptcy Code, the CCAA, the Initial Order, other applicable laws and orders of the Courts.

D. Cooperation

10. To assist in the efficient administration of the Restructuring Proceedings and in recognizing that the Debtors may each be creditors of another Debtor's estate, each of the Debtors and its respective Estate Representatives shall, where appropriate:

(a) cooperate with the others in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the

administration of the Restructuring Proceedings for the benefit of the Debtors» respective estates and stakeholders.

11. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

- a. The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Restructuring Proceedings.
- b. If the issue of the proper jurisdiction of either Court to determine an issue is raised by an interested party in either of the Restructuring Proceedings or a written request for a Joint Hearing (as defined below) is made with respect to any relief sought in either Court, the Courts may consult with one another to determine an appropriate process by which the issue of jurisdiction will be determined. Such process shall be subject to submissions by the Debtors, the U.S. Trustee, the Creditors Committee, the Estate Representatives, the Monitor, the Term Loan DIP Lenders and any interested party prior to any determination on the issue of jurisdiction or Joint Hearing request being made by either Court, and such issue of jurisdiction or Joint Hearing request shall be decided prior to the adjudication of the matter in the Court such matter was originally brought.
- c. The Courts may, but are not obligated to, coordinate activities in the Restructuring Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.
- d. The U.S. Court and the Canadian Court may conduct joint hearings (each a **Joint Hearing**) with respect to any matter relating to the conduct, administration, determination, or disposition of any aspect of the Chapter 11 Cases or the Canadian Proceeding, including, the interpretation or implementation of this Protocol, where both Courts consider such a Joint Hearing to be necessary

or advisable, or as otherwise provided herein. With respect to any Joint Hearings, unless otherwise ordered or otherwise agreed to by the Courts, the following procedures will be followed:

- i. A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.
- ii. Notices, submissions, motions or applications by any party (collectively, the **≈PleadingsΔ**) that are or become the subject of a Joint Hearing shall be made or filed initially only to the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings in respect of relief sought from both Courts shall be filed with both Courts.
- iii. Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing or application (collectively, the **≈Evidentiary MaterialsΔ**) shall file or otherwise submit such materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.
- iv. If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings or appearance, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from such Court.
- v. The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the Joint Hearings shall be entitled to communicate with each other in advance of any Joint Hearing, with or without counsel being present, to: (a) establish guidelines for

the orderly submission of Pleadings, Evidentiary Materials, and other papers and for the rendering of decisions by the Courts; and (b) to address any related procedural, administrative or preliminary matters.

- vi. The Judge of the U.S. Court and the Justice of the Canadian Court who preside over any Joint Hearing, shall be entitled to communicate with each other during or after any Joint Hearing, with or without counsel present, for the purposes of (a) determining whether consistent rulings can be made by both Courts; (b) coordinating the terms upon the Courts' respective rulings; and (c) addressing any other procedural or administrative matters.

12. Notwithstanding the terms of paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each Court shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to and properly before such Court; and (b) the conduct of the parties appearing in such matters.

13. Notwithstanding the foregoing, or anything to the contrary herein, in the interest of cooperation and coordination of these proceedings, each Court shall recognize and consider all privileges applicable to communications between counsel and parties, including those contemplated by the "common interest doctrine" and like privileges, which would be applicable in each respective Court. Such privileges in connection with communications shall be applicable in both Courts with respect to all parties to these proceedings having any requisite common interest.

14. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things,

hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 30 herein.

E. Recognition of Stay of Proceedings

15. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Debtors and their property under section 362 of the Bankruptcy Code (the U.S. Stay). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (a) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (b) the enforcement of the U.S. Stay in Canada.

16. The U.S. Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Debtors, their property and the directors and officers of the Debtors under the CCAA and the Initial Order (the Canadian Stay). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (a) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay; and (ii) the enforcement of the Canadian Stay in the U.S.

17. Nothing contained herein shall affect or limit the Debtors» or other parties» rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located. Subject to the terms hereof, (a) any motion with respect to the application of the stay of proceedings issued by the Canadian Court in the CCAA shall be heard and determined by the Canadian Court and (b) any motion with respect

to the application of the stay under section 362 of the Bankruptcy Code shall be heard and determined by the U.S. Court.

F. Retention and Compensation of Representatives and Professionals

18. The Monitor, its officers, directors, employees, counsel, agents, and any other professionals retained therefor, wherever located, (collectively, the **Monitor Parties**) and any other estate representatives in the Canadian Proceeding, including any Company representatives who appear in the Canadian Proceeding (collectively, the **Canadian Representatives**) shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' appointment and tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters related to the Canadian Representatives arising in the Canadian Proceeding under the CCAA or other applicable Canadian law. Additionally, the Canadian Representatives: (x) shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors; (y) shall be compensated for their services solely in accordance with the CCAA, the Initial Order and other applicable laws of Canada and the applicable Provinces, or orders of the Canadian Court; and (z) shall not be required to seek approval of their compensation in the U.S. Court.

19. The Monitor Parties shall be entitled to the protections of section 306 of the Bankruptcy Code, the same protections and immunities in the U.S. as those granted to them under the CCAA and the Initial Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceeding, the Monitor

Parties shall incur no liability or obligations as a result of the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the Initial Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

20. Any estate representative appointed in the Chapter 11 Cases, including without limitation, any restructuring officer appointed under section 363 of the Bankruptcy Code and any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the "U.S. Representatives") shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives' appointment and tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives' liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters related to the U.S. Representatives arising in the Chapter 11 Cases under the Bankruptcy Code or other applicable laws of the U.S. Additionally, the U.S. Representatives and their counsel and other professionals retained therefor (in all cases, whether in Canada or U.S.): (x) shall not be required to seek approval of their retention in the Canadian Court; (y) shall be compensated for their services to the Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the U.S. or orders of the U.S. Court; and (z) shall not be required to seek approval of their compensation in the Canadian Court.

21. Any professionals retained by or with the approval of the Debtors for activities performed in Canada or in connection with the Canadian Proceeding, including, in each case, counsel, financial advisors, accountants, consultants and experts

(collectively, the **≈Canadian ProfessionalsΔ**) shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the Canadian Court under the CCAA, the Initial Order any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

22. Any professionals retained by or with approval of the Debtors for activities performed in the U.S. or in connection with the Chapter 11 Cases, including, in each case, counsel, financial advisors, accountants, consultants and experts (collectively, the **≈U.S. ProfessionalsΔ**) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the U.S. or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention of compensation in the Canadian Court.

23. Subject to paragraph 24 herein, any professional retained by the Creditors» Committee, including in each case, without limitation, counsel and financial advisors (collectively, the **≈Committee ProfessionalsΔ**) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Such Committee Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court or any other court.

G. Appearances

24. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Restructuring Proceedings, including the Monitor Parties, Creditors Committee, the Estate Representatives, the U.S. Trustee and the Term Loan DIP Lenders, each of which parties shall have the right to appear and be heard in the Chapter 11 Cases and Canadian Proceeding, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

H. Claims Protocol

25. It may be necessary to implement a specific claims protocol to address, among other things and without limitation, the timing process, jurisdiction and applicable governing law to be applied to the resolution of claims filed by the Debtors» creditors (including intercompany claims) in the Canadian Proceeding and the Chapter 11 Cases. In such event, and in recognition of the inherent complexities of the inter-company claims that may be asserted in the Restructuring Proceedings, the Debtors shall use commercially reasonable efforts to negotiate a specific claims protocol, in form and substance satisfactory to the Debtors, the Monitor, and the Creditors» Committee, which protocol shall be submitted to the Canadian Court and the U.S. Court for approval. In the event that the Debtors fail to reach agreement among such parties, the Debtors shall file a motion in both the Canadian Court and the U.S. Court seeking approval of such claims protocol.

I. Notices

26. Notice of any Pleading or paper filed in one or both of the Restructuring Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier, email or other electronic forms of communication) to the following: (a) creditors and interested parties, in accordance with the practice and procedural rules of the jurisdiction where the papers are filed or the proceedings are to occur and orders of the applicable Court; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this paragraph, to counsel to the (i) the Debtors; (ii) the Monitor; (iii) the U.S. Trustee; (iv) the Creditors» Committee; (v) the agents under the Debtors» debtor-in-possession financing facilities; (vi) the agent under the Debtors» prepetition term loan facility and counsel to the ad hoc committee of certain lenders under the prepetition term loan facility (until such facility has been refinanced); (vii) the agent under the Debtors» prepetition ABL facility; (viii) any other statutory committee appointed in the Restructuring Proceedings and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request by either Court, the Debtors shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions, or similar papers issued by the other Court in the Restructuring Proceedings.

27. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 26 above.

J. Effectiveness; Modification

28. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

29. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceedings to supplement, modify, terminate, or replace this Protocol shall be given in accordance with the notice provisions set forth in paragraph 26 above.

K. Procedure for Resolving Disputes Under This Protocol

30. Disputes relating to the terms, intent, or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court, or both Courts upon notice in accordance with the notice provisions outlined in paragraph 26 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity, and inherent jurisdiction of the other Court established under existing law.

31. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole discretion, provide advice or guidance to the other Court with respect to legal issues in accordance with the following procedures:

- a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- b. the Court issuing such advice or guidance shall provide it to the other Court in writing;
- c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 26 hereof; and
- d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee, the Monitor, the Creditors» Committee, the Term Loan DIP Lenders and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

32. For clarity, the provisions of paragraph 31 shall not be construed to restrict the ability of either Court to confer as provided in paragraph 11 above whenever it deems it appropriate to do so.

L. Preservation of Rights

33. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims, and defenses of the Debtors and their respective estates, the Creditors» Committee, the Estate Representatives, the U.S. Trustee, the Term Loan DIP Lenders or any of the Debtors» creditors under applicable law, including the Bankruptcy Code and the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights

of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the U.S.

Schedule "A" - Guidelines

Schedule "A"

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 autho-

rized 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 affect-

ed 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 tran-

script 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.

Schedule "B" – List of Debtor Entities

Corporation(s) incorporated under the laws of British Columbia

1. Performance Sports Group Ltd.

Corporation(s) incorporated under the laws of Canada

2. KBAU Holdings Canada, Inc.
3. Bauer Hockey Corp.
4. Easton Baseball/Softball Corp.
5. BPS Diamond Sports Corp.
6. Bauer Hockey Retail Corp.
7. PSG Innovation Corp.
8. Bauer Performance Sports Uniforms Corp.
9. Performance Lacrosse Group Corp.
10. BPS Canada Intermediate Corp.

Corporation(s) incorporated under the laws of Vermont

11. Bauer Hockey, Inc.

Corporation(s) incorporated under the laws of Delaware

12. BPS U.S. Holdings Inc.
13. Easton Baseball/Softball Inc.
14. BPS Diamond Sports Inc.
15. Bauer Hockey Retail Inc.
16. PSG Innovation Inc.
17. Bauer Performance Sports Uniforms Inc.
18. Performance Lacrosse Group Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
BPS US Holdings Inc., <i>et al.</i> , ¹)	Case No. 16-12373 (KJC)
)	
Debtors.)	(Jointly Administered)
)	
)	Ref. Docket Nos. 108 & 118 + 211
)	

ORDER APPROVING CROSS-BORDER PROTOCOL

Upon consideration of the *Debtors' Motion for an Order Approving Cross-Border Protocol* (the "Motion")² filed by the above-captioned Debtors for entry of an order approving that certain cross-border restructuring protocol attached hereto as **Exhibit 1** (the "Cross-Border Protocol"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and the Court having determined that it may enter a final order consistent with

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors' headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

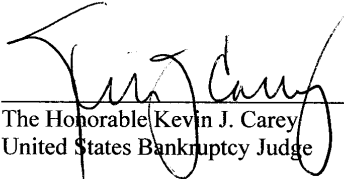
² Capitalized terms used but not defined herein have the meanings assigned to such terms in the Motion.

Article III of the United States Constitution; and a hearing having been held to consider the relief requested in the Motion; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Cross-Border Protocol, attached hereto as Exhibit 1, is hereby approved.
3. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: Nov 29, 2016
Wilmington, Delaware


The Honorable Kevin J. Carey
United States Bankruptcy Judge

Feature

BY R. CRAIG MARTIN AND MARK FAIRBAIRN

U.S. and Foreign Courts Adopt the Judicial Insolvency Network's Cross-Border Guidelines



R. Craig Martin
DLA Piper LLP
Wilmington, Del.



Mark Fairbairn
DLA Piper LLP
Hong Kong

Craig Martin is a partner with DLA Piper LLP in Wilmington, Del., and is co-author of Chapter 15 for Foreign Debtors (ABI 2015). Mark Fairbairn is a partner and head of the firm's Restructuring Group in Asia.

The U.S. Bankruptcy Court for the District of Delaware has adopted a new local rule, effective Feb. 1, 2017, that permits application of “Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters” (the “Cross-Border Guidelines”).¹ Under this rule, the Cross-Border Guidelines will apply where the bankruptcy court approves (either on application of the parties or at the bankruptcy court’s own initiative) a protocol or enters an order applying the Cross-Border Guidelines as adopted.

Similarly, the Supreme Court of Singapore implemented the Cross-Border Guidelines, effective on Feb. 1, 2017. Subsequently, on Feb. 17, 2017, the U.S. Bankruptcy Court for the Southern District of New York entered General Order M-511, adopting the Cross-Border Guidelines. On March 9, 2017, the Supreme Court of Bermuda issued a Practice Direction, which permits the application of all or any part of the Cross-Border Guidelines.

Background on the Adoption of the Cross-Border Guidelines

The Cross-Border Guidelines were drafted during a conference held on Oct. 10-11, 2016, of the Judicial Insolvency Network. This network was initiated by the Supreme Court of Singapore with the aim of encouraging communication and cooperation among national courts. This conference was hosted by the Supreme Court of Singapore, and judges from Australia (Federal Court and New South Wales), the British Virgin Islands, Canada (Ontario), the Cayman Islands, England and Wales, and the U.S. (the District of Delaware and Southern District of New York) attended in person. Representatives from the Hong Kong SAR attended as observers, and the Bermuda Commercial Court participated in the conference electronically. The effort grew out of Singapore’s increasing focus to establish Singapore as an international debt-restructuring center.²

During the conference, the participating judges discussed the need for guidelines and the key aspects of communication and cooperation among

courts, including the role of insolvency officeholders or other representatives and parties involved in cross-border insolvency proceedings. These judges drafted the Cross-Border Guidelines as a new set of guidelines, albeit with reference to other guidelines such as those that have been previously used by courts, but specifically distilled concepts set out in the “Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases,” jointly promulgated by the American Law Institute, American Bar Association and International Insolvency Institute. The underlying rationale was to consolidate, update and modernize the principles contained in other guidelines and protocols based on actual judicial experience.

Description of the Guidelines

The Cross-Border Guidelines start with an introduction that describes the rationale behind them, including the “overarching objective” of improving the efficiency and effectiveness of parallel cross-border insolvency proceedings by enhancing the coordination and cooperation among the courts supervising parallel insolvency proceedings. The Cross-Border Guidelines aim to promote timely coordination by permitting consideration of the Cross-Border Guidelines at the earliest practicable opportunity. The guidelines also seek to ensure that relevant stakeholders’ interests are respected while information is shared to reduce costs in identifying, preserving and maximizing the value of the debtors’ assets and businesses. To that end, the guidelines seek to avoid or minimize litigation, costs and inconvenience to stakeholders and ensure the management of a debtor’s estate in a way that is proportionate to the aggregate amount of the financial claims that are involved, the nature of the case and the complexity of the issues, as well as the number of creditors and jurisdictions involved in the parallel insolvency proceedings.

There are then 14 different guidelines covering the adoption and interpretation of the Cross-Border Guidelines, communication between the courts, appearance in court and consequential provisions. Annex A sets out seven principles for the conduct of joint hearings between courts.

¹ See Del. Bankr. L. R. 9029-2.

² See generally Report of Committee to Strengthen Singapore as an International Centre for Debt Restructuring, available at www.mlaw.gov.sg/content/dam/minlaw/corp/News/Report%20of%20the%20Committee.pdf (last visited March 23, 2017).

Guidelines 1-6: Adoption and Interpretation

The first six guidelines address the manner and scope of the adoption of the Cross-Border Guidelines, including the suggestion that the courts supervising parallel proceedings should encourage their adoption as early as practicable to aid in administration. In so doing, Guideline 2 provides that the Cross-Border Guidelines should be adopted by a protocol or court order following an application by the parties or, if the court has power to do so, at its own direction. Guideline 3 provides that, if possible, the protocol or order should address coordination of requests for court approvals or communications with creditors in a time-saving manner that avoids unnecessary and costly court hearings.

Guidelines 4 and 5 clarify that the Cross-Border Guidelines are intended to be procedural in nature and are not intended to interfere with a court's jurisdiction in administering the proceeding before it or to interfere with or derogate from the applicable rules or ethical principles that are relevant to the proceeding. Guideline 4 provides that a court may refuse to take any action that would be "manifestly contrary to the public policy" in its jurisdiction or that would not sufficiently protect the interests of the creditor or other interested parties. These provisions are consistent with certain provisions in chapter 15 of the Bankruptcy Code.³ In a similar vein, Guideline 6 is similar to § 1508 of the Bankruptcy Code in that it provides that the Cross-Border Guidelines should be interpreted with due regard to their international origins and the need to promote good faith and uniformity in their application.

Guidelines 7-9: Communication Between the Courts

Guideline 7 provides that courts may receive communications from a foreign court and may respond directly to them for the purpose of the orderly making of submissions, rendering decisions by the courts, and coordinating and resolving any procedural administrative or preliminary matters related to a joint hearing under Annex A. These communications may occur as agreed to by the courts in specific cases and may include either the court sending or transmitting orders, judgments, opinions and other records of proceedings directly to the other court with advance notice to counsel as the court considers appropriate or directing counsel to transmit these materials.

Guideline 7 also permits two-way communications by telephone, video or other electronic means as contemplated by Guideline 8. Guideline 8 provides that in the event of these communications, other than on procedural matters or unless the courts otherwise direct, the parties might be present, and if they are entitled to be present, they should receive advance notice in accordance with the courts' rules. The communications should also be recorded, and any transcript should be prepared and filed on the record. Guideline 8 also authorizes court personnel other than the judges in each court to communicate with one another outside of the presence of the parties to enable them to establish appropriate arrangements for the communications between the judges.

Finally, Guideline 9 permits a court to provide notice of all proceedings to parties in the proceedings in another jurisdiction. This allows a court to ensure transparency and ensures that the parties in the various jurisdictions are aware of proceedings in the various, but relevant, jurisdictions.

Guidelines 10-11: Appearance in Court

Guidelines 10 and 11 provide interesting and useful provisions that allow a party or appropriate person to appear before and be heard by a foreign court, subject to the approval of the foreign court to such appearance. While it is the practice in many cross-border cases to permit foreign counsel to speak at the podium, Guideline 10 permits the more formal authorization of such appearances and will likely create some certainty and comfort for out-of-country counsel when seeking to explain the foreign parallel proceedings.

Guideline 11 also permits a court to allow a party to appear and be heard on a specific matter without becoming subject to its jurisdiction other than with respect to the specific matter on which the party appears. This jurisdictional exception must be permitted by law and be otherwise appropriate. This is a significant guideline that may ensure that foreign creditors will be able to participate in foreign insolvency proceedings without fully exposing themselves to the jurisdiction of a foreign court for general purposes.

Guidelines 12-14: Consequential Provisions

The last three guidelines provide that a court should recognize and accept as authentic the provisions of the statutes, statutory or administrative regulations and rules of the court that are applicable to a foreign proceeding, as well as the orders made in that proceeding without any further proof subject only to proper objection on valid grounds and then only to the extent of such objection. Guideline 14 permits that a protocol or order made under the Cross-Border Guidelines might be amended, modified and extended as appropriate by the relevant court and consistent with the Cross-Border Guidelines.

Annex A (Joint Hearings): Annex A sets forth the guidelines for the conduct of joint hearings and by its terms encourages the parties to address the matters set out in Annex A in the protocol or order entered under the Cross-Border Guidelines. Annex A permits the conduct of a joint hearing and sets forth seven different principles that should apply if a joint hearing is conducted, which include the following:

- (i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

³ See 11 U.S.C. §§ 1506 and 1521.

continued on page 63

Courts Adopt the Judicial Insolvency Network's Cross-Border Guidelines

from page 25

(iv) Consideration should be given to [the] coordination of the process, and [the] format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures 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.

(vii) A 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 outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

Some of the points regarding joint hearings replicate the earlier guidelines (*e.g.*, Guidelines 10 and 11 address the appearance in a court and the submission to a jurisdiction, as does item (v) of Annex A). Thus, it seems that in the general course, a court may permit certain actions in connection with administrative hearings before itself that it might need to reconsider or replicate if a joint hearing is to be conducted. This thoughtful process as to the impact of the appearance and participation in joint proceedings, contrasted with independent hearings, will likely aid in the certainty of administration. The guidelines contemplate setting out solutions to the problems in advance in order to provide greater certainty and efficiency in the conduct of parallel cross-border proceedings.

Conclusion

The adoption of the Cross-Border Guidelines is important, and while many U.S. courts have previously imple-

mented similar concepts in orders approving cross-border protocols, not every case can support the time and expense of such a protocol. Indeed, Hon. **Christopher S. Sontchi** of the U.S. Bankruptcy Court for the District of Delaware, who participated in the Judicial Insolvency Network conference in Singapore, said that the “implementation of the Cross-Border Guidelines in Delaware would lead to more efficient and prompt coordination and cooperation in many cases, but especially those smaller cases that in the past have not had the resources to pursue expensive and lengthy negotiations and hearings over a cross-border protocol.” Under the Delaware local rule, a bankruptcy judge, on his own initiative if necessary, can enter an order that applies the Cross-Border Guidelines, in whole or in part, in any case. Hon. **Robert D. Drain** of the U.S. Bankruptcy Court for the Southern District of New York, who also participated in the drafting process, added that “[t]he Guidelines are consistent with Chapter 15’s general directive to cooperate and coordinate with foreign courts and representatives.” He added that since the Cross-Border Guidelines “have been developed by judges from leading commercial jurisdictions worldwide; however, they provide a practical and efficient means to implement this core principle.”

The adoption of the Cross-Border Guidelines by local rule or general order is an important step in the ongoing effort to coordinate insolvency proceedings across multiple jurisdictions. While the first courts to adopt the Cross-Border Guidelines are in Singapore, the U.S. and Bermuda, it is expected that other jurisdictions will adopt them, which will take consistency and uniformity in global insolvency proceedings to a new international standard. It is also envisaged that the Judicial Insolvency Network will convene a conference every two years in the various jurisdictions, and this judicial input into the practice and procedure of cross-border insolvency law likely will be an important step forward in the development of the best practices in the adjudication of cross-border insolvencies. Indeed, in the Asian region, cross-border insolvency — and cooperation among courts — is in the early stages of development, and the Cross-Border Guidelines seem to be a welcome development in this important economic region. **abi**

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MODALITIES OF COURT-TO-COURT COMMUNICATION

Scope and definitions

1. These Modalities apply to direct communications (written or oral) between courts in specific cases of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”). Nothing in this document precludes indirect means of communication between courts, such as through the parties or by exchange of transcripts, etc. This document is subject to any applicable law.
2. These Modalities govern only the mechanics of communication between courts in Parallel Proceedings. For the principles of communication (*e.g.*, that court-to-court communications should not interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings, etc.), reference may be made to the *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (the “Guidelines”) issued by the Judicial Insolvency Network in October 2016 and attached as **APPENDIX A**.
3. These Modalities contemplate contact being initiated by an “Initiating Judge” (defined below). The parties before such judge may request him or her to initiate such contact, or the Initiating Judge may seek it on his or her own initiative.
4. In this document:
 - a. “Initiating Judge” refers to the judge initiating communication in the first instance;
 - b. “Receiving Judge” refers to the judge receiving communication in the first instance;
 - c. “Facilitator” refers to the person(s) designated by the court where the Initiating Judge sits or the court where the Receiving Judge sits (as the case may be) to initiate or receive communications on behalf of the Initiating Judge or the Receiving Judge in relation to Parallel Proceedings.

Designation of Facilitator

5. Each court may designate one or more judges or administrative officials as the Facilitator. It is recommended that, where the Facilitator is not a judge, a judge be designated to supervise the initial steps in the communication process.
6. Courts should prominently publish the identities and contact details of their Facilitators, such as on their websites.
7. Courts should prominently list the language(s) in which initial communications may be made and the technology available to facilitate communication between or among courts (*e.g.* telephonic and/or video conference capabilities, any secure channel email capacity, etc.).

Initiating communication

8. To initiate communication in the first instance, the Initiating Judge may require the parties over whom he or she exercises jurisdiction to obtain the identity and contact details of the Facilitator of the other court in the Parallel Proceedings, unless the information is already known to the Initiating Judge.
9. The first contact with the Receiving Judge should be in writing, including by email, from the Facilitator of the Initiating Judge's court to the Facilitator of the Receiving Judge's court, and contain the following:
 - a. the name and contact details of the Facilitator of the Initiating Judge's court;
 - b. the name and title of the Initiating Judge as well as contact details of the Initiating Judge in the event that the Receiving Judge wishes to contact the Initiating Judge directly and such contact is acceptable to the Initiating Judge;
 - c. the reference number and title of the case filed before the Initiating Judge and the reference number and title (if known; otherwise, some other identifier) of the case filed before the Receiving Judge in the Parallel Proceedings;

- d. the nature of the case (with due regard to confidentiality concerns);
- e. whether the parties before the Initiating Judge have consented to the communication taking place (if there is any order of court, direction or protocol for court-to-court communication for the case approved by the Initiating Judge, this information should also be provided);
- f. if appropriate, the proposed date and time for the communication requested (with due regard to time differences); and
- g. the specific issue(s) on which communication is sought by the Initiating Judge.

Arrangements for communication

- 10. The Facilitator of the Initiating Judge's court and the Facilitator of the Receiving Judge's court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel or the parties unless otherwise ordered by one of the courts.
- 11. The time, method and language of communication should be to the satisfaction of the Initiating Judge and the Receiving Judge, with due regard given to the need for efficient management of the Parallel Proceedings.
- 12. Where translation or interpretation services are required, appropriate arrangements shall be made, as agreed by the courts. Where written communication is provided through translation, the communication in its original form should also be provided.
- 13. Where it is necessary for confidential information to be communicated, a secure means of communication should be employed where possible.

Communication between the Initiating Judge and the Receiving Judge

- 14. After the arrangements for communication have been made, discussion of the specific issue(s) on which communication was sought by the Initiating Judge and subsequent

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communications in relation thereto should, as far as possible, be carried out between the Initiating Judge and the Receiving Judge in accordance with any protocol or order for communication and cooperation in the Parallel Proceedings¹.

15. If the Receiving Judge wishes to by-pass the use of a Facilitator, and the Initiating Judge has indicated that he or she is amenable, the judges may communicate with each other about the arrangements for the communication without the necessity for the participation of counsel or the parties.
16. Nothing in this document should limit the discretion of the Initiating Judge to contact the Receiving Judge directly in exceptional circumstances.

¹ See Guideline 2 of the *Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters*.

APPENDIX A

**GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN
COURTS IN CROSS-BORDER INSOLVENCY MATTERS**

INTRODUCTION

- A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”) by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.
- B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.
- C. In particular, these Guidelines aim to promote:
 - (i) the efficient and timely coordination and administration of Parallel Proceedings;
 - (ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders’ interests are respected;
 - (iii) the identification, preservation, and maximisation of the value of the debtor’s assets, including the debtor’s business;
 - (iv) the management of the debtor’s estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;
 - (v) the sharing of information in order to reduce costs; and
 - (vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties² in Parallel Proceedings.
- D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit³.
- E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

² The term “parties” when used in these Guidelines shall be interpreted broadly.

³ Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

- F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, “administrator” includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order⁴, following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

- (i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;
- (ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;
- (iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or
- (iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

⁴ In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of 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 any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

- (i) 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.
- (ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, 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.
- (iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

- (i) In the normal case, parties may be present.
- (ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed.

A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

- (iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.
- (iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other 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.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof

for purposes of the proceedings before it, subject to its law and 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. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

- (i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.
- (ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.
- (iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.
- (iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.
- (v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.
- (vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures 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.
- (vii) A 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 outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.