

A stylized world map in white and light blue tones, centered on the Atlantic Ocean, with faint grid lines. The map is the background for the entire page.

# **ALI-III Global Principles for Cooperation in International Insolvency Cases 2012**

**International Insolvency Institute  
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# ALI-III Global Principles for Cooperation in International Insolvency Cases 2012

The **ALI-III Global Principles for Cooperation in International Insolvency Cases 2012** (*ALI-III Global Principles and Guidelines 2012*) are the result of a joint study commissioned by the American Law Institute (ALI) and the International Insolvency Institute (III). These guidelines include 37 Global Principles for Cooperation in International Insolvency Cases, and 18 Global Guidelines for Court-to-Court Communications in International Insolvency Cases. These Principles and Guidelines constitute a nonbinding statement, drafted in a manner to be used both in civil-law and common-law jurisdictions around the world.

This study was conducted over a period of six years ending in 2012. The Joint Reporters were Professor Ian F. Fletcher, University College London (UK) and Professor Bob Wessels, University of Leiden (The Netherlands). The supporting report was produced in collaboration with expert consultants (Members of ALI or III and others) representing more than 30 different countries, reflecting a wide and representative cross section of the different legal traditions and styles around the globe. It demonstrated that, subject to certain necessary modifications, the essential provisions of the The American Law Institute's Principles of Cooperation among the member states of the North American Free Trade Agreement (NAFTA) from 2003 are capable of introduction to jurisdictions across the world.

The Principles and Guidelines formed a solid basis for the European Union Cross-Border Insolvency Court-to-Court Cooperation Principles and Guidelines ("[JudgeCo Principles and Guidelines](#)") published in 2015. Their development was co-funded by the European Commission and III.

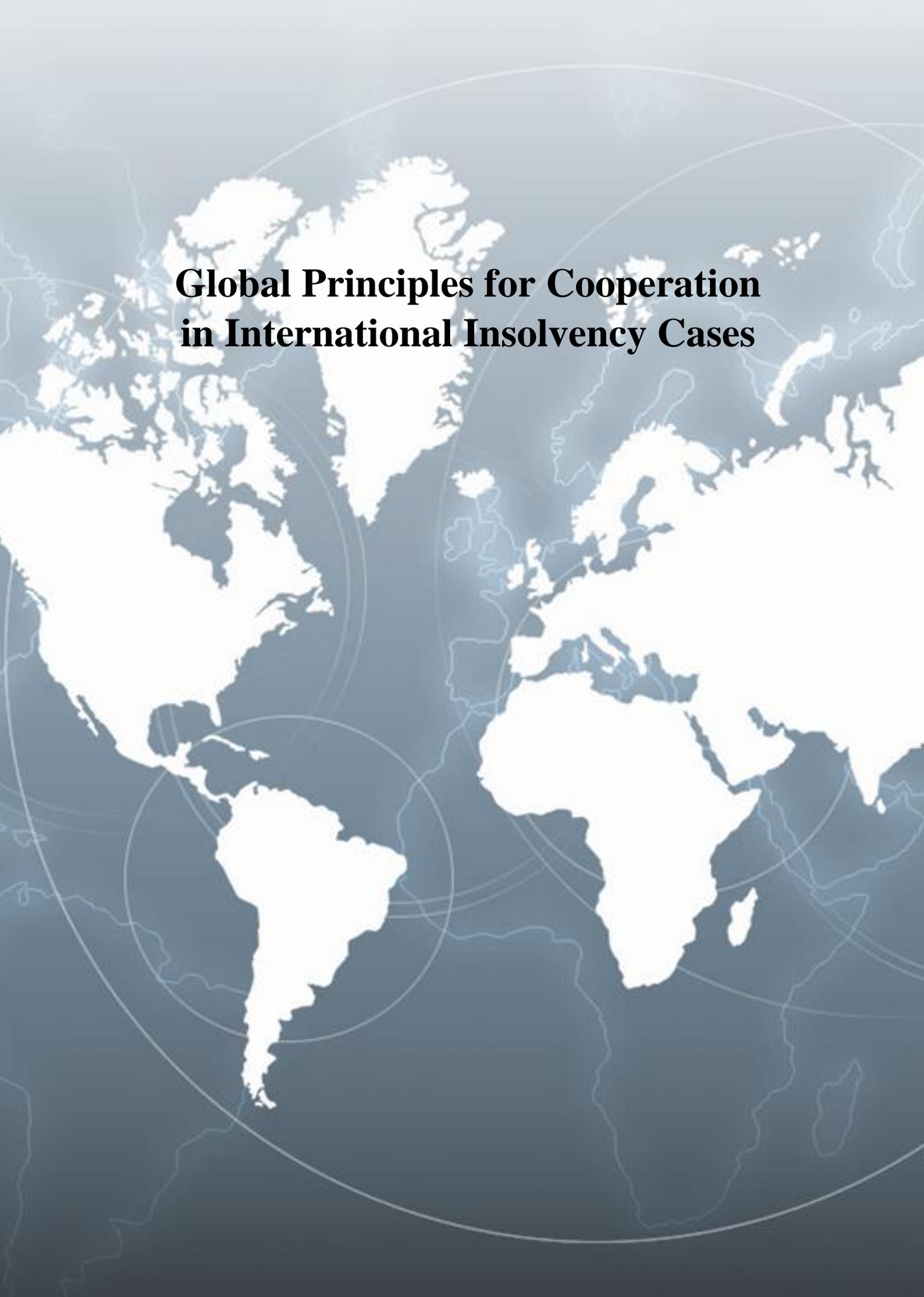
Given the developments in the regulation of cross-border court-to-court cooperation in insolvency and restructuring cases between 2012 and 2017, and the publication of the Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency ("[JIN Guidelines](#)") in Spring 2017, we would like to remind everyone about the excellent work that has been done on the ALI-III Global Principles and Guidelines 2012, upon which the JIN Guidelines have drawn. In furtherance of the global dissemination of the blackletter text, translations will be added to the III website as they become available. The texts are mentioned with approval in the [Chancery Guide](#) issued by the Chancery Division of the High Court of England and Wales in [an amendment made in May 2017](#) relating to the conduct of cross-border insolvency cases.

III recommends the ALI-III Global Principles and Guidelines 2012 for use in other regions and by other states, and III may be in a position to provide technical assistance for those states or associations of judges. This initiative provides confirmation that the involvement of III continues to grow through its contribution to the architecture of international insolvency.



Alan Bloom  
President III





# **Global Principles for Cooperation in International Insolvency Cases**

## **GLOBAL PRINCIPLES FOR COOPERATION IN INTERNATIONAL INSOLVENCY CASES**

### **Principle 1    Overriding objective**

**1.1. These Global Principles embody the overriding objective of enabling courts and insolvency administrators to operate effectively and efficiently in international insolvency cases with the goals of maximizing the value of the debtor's global assets, preserving where appropriate the debtors' business, and furthering the just administration of the proceeding.**

**1.2. In achieving the objective of Global Principle 1.1, due regard should be given to the interests of creditors, including the need to ensure similarly ranked creditors are treated equally. Due regard should also be given to the interests of the debtor and other parties in the case, and to the international character of the case.**

**1.3. All parties in an international insolvency case should further the overriding objective of Principle 1.1 and should conduct themselves in good faith in dealing with courts, insolvency administrators and other parties in the case.**

**1.4. Courts and insolvency administrators should cooperate in an international insolvency case with the aim of achieving the objective of Principle 1.1.**

**1.5. In the interpretation of these Global Principles due regard should be given to their international origin and to the need to promote good faith and uniformity in their application.**

### **Principle 2    Aim**

**2.1. The aim of these Global Principles is to facilitate the coordination of the administration of international insolvency cases involving the same debtor, including where appropriate through the use of a protocol.**

**2.2. In particular, these Global Principles aim to promote:**

- (i) The orderly, effective, efficient and timely administration of proceedings;**
- (ii) The identification, preservation and maximisation of the value of the debtor's assets, including the debtor's business, on a global basis;**
- (iii) The sharing of information in order to reduce costs; and**
- (iv) The avoidance or minimization of litigation, costs and inconvenience to the parties in the proceedings.**

**2.3. These Global Principles aim to promote the administration of separate international insolvency cases with a view to:**

- (i) Ensuring that creditors' interests are respected and that creditors are treated equally;**
- (ii) Saving expense;**
- (iii) Managing 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 to the number of jurisdictions involved; and**
- (iv) Ensuring that the case is dealt with effectively, efficiently and timely.**

### **Principle 3 International Status; Public Policy**

Nothing in these Global Principles is intended to:

- (i) Interfere with the independent exercise of jurisdiction by a national court involved, including in its authority or supervision over an insolvency administrator;
- (ii) Interfere with the national rules or ethical principles by which an insolvency administrator is bound according to applicable national law and professional rules;
- (iii) Prevent a court from refusing to take an action which would be manifestly contrary to the public policy of the forum state; or
- (iv) Confer substantive rights, to interfere with any function or duty arising out of any applicable law or to encroach upon any local law.

### **Principle 4 Case management**

**4.1. A Court should, by actively managing an international insolvency case, coordinate and harmonize the proceedings before it with those in other states except where there are genuine and substantial reasons for doing otherwise and then only to the extent considered to be appropriate in the circumstances.**

**4.2. A court:**

- (i). Should seek to achieve disposition of the international insolvency case effectively, efficiently and timely, with due regard to the international character of the case;
- (ii). Should manage the case in consultation with the parties and the insolvency administrators involved and with other courts involved;
- (iii). Should determine the sequence in which issues are to be resolved, and
- (iv). May hold status conferences regarding the international insolvency case.

### **Principle 5 Equality of arms**

**5.1. All judicial orders, decisions and judgments issued in an international insolvency case are subject to the principle of equality of arms, so that there should be no substantial disadvantage to a party concerned. Accordingly:**

- (i). each party should have a full and fair opportunity to present evidence and legal arguments;
- (ii). each party should have a full and fair opportunity to comment on the evidence and legal arguments presented by other parties.

**5.2. When the urgency of a situation calls for a court to issue an order, decision or judgment on an expedited basis, the court should ensure:**

- (i). that reasonable notice, consistent with the urgency of the situation, is provided by the court or the parties to all parties who may be affected by the order, decision or judgment, including the major unsecured creditors, any affected secured creditors, and any relevant supervisory governmental authorities;
- (ii). that each party may seek to review or challenge the order, decision or judgment issued on an expedited basis as soon as reasonably practicable, based on local law;
- (iii). that any order, decision or judgment issued on an expedited basis is temporary and is limited to what the debtor or the insolvency administrator requires in order to continue the operation of the business or to preserve the estate for a limited period, appropriate to the situation. The court should then hold further proceedings to consider any appropriate additional relief for the debtor or the affected creditors, in accordance with Principle 5.1.

## **Principle 6      Decision and Reasoned Explanation**

**6.1. Upon completion of the parties' presentations relating to the opening of an insolvency case or the granting of recognition or assistance in an international insolvency case, the court should promptly issue its order, decision or judgment.**

**6.2. All parties should cooperate and consult with one another concerning scheduling of proceedings.**

**6.3. The court may issue an order, decision or judgment orally, which should be set forth in written or transcribed form as soon as possible.**

**6.4. The order, decision or judgment should identify any order previously made on any related subject, the period, if any, for which it will be in force, any appointment of an insolvency professional and any determination regarding costs, the issues to be resolved, and the timetable for the relevant stages of the proceedings, including dates and deadlines.**

**6.5. If the order, decision or judgment is opposed or appealed, the court should set forth the legal and evidentiary grounds for the decision.**

## **Principle 7      Recognition**

**7.1. An insolvency case opened in a state which, with respect to the debtor concerned, has jurisdiction under the rules of international jurisdiction established by these Global Principles, in conformity with Global Principle 13, should be recognized and given appropriate effect under the circumstances in every other state.**

**7.2. Recognition should be determined in a proceeding that is orderly, effective, efficient and timely, with a minimum of formalities and with due regard to the requirements of Global Principle 3 (Public Policy) and Global Principle 5 (Equality of arms).**

## **Principle 8      Stay or Moratorium**

**8.1. Insolvency cooperation may require a stay or moratorium at the earliest possible time in each state where the debtor has assets or where litigation is pending relating to the debtor or the debtor's assets. The stay or moratorium should impose reasonable restraints on the debtor, creditors, and other parties.**

**8.2. If the local law does not provide an effective procedure for obtaining relief from the stay or moratorium, then a court should exercise its discretion to provide such relief where appropriate. Exceptions to the stay or moratorium should be limited and clearly defined.**

## **Principle 9      Cooperation and sharing of information between courts and administrators**

**9.1. Cooperation between courts and between administrators should include prompt and full disclosure regarding all relevant information, including assets and claims, with a view to promoting transparency and reducing international fraud.**

**9.2. Insolvency administrators should provide all other insolvency administrators involved with prompt and full disclosure about the existence and status of the insolvency proceedings in which they have been appointed.**

**9.3. Insolvency administrators should share relevant non-public information with other insolvency administrators, subject to applicable law and appropriate confidentiality arrangements.**

**9.4. Following recognition, a foreign representative should be entitled to use all available legal means to obtain information about the debtor’s assets in all jurisdictions where those assets may be found.**

**9.5. An insolvency administrator, debtor, or creditor filing an insolvency case or seeking recognition of a foreign insolvency proceeding should provide prompt and full disclosure about the existence and status of any foreign insolvency case that concerns the same or a related debtor at the time of filing.**

**9.6. An insolvency administrator should provide prompt and full disclosure to other insolvency administrators of material developments in any foreign insolvency case that concerns the same or a related debtor.**

## **Principle 10 Sharing of Value**

**Where a court has recognized a foreign insolvency case that has been opened in another state having international jurisdiction according to these Global Principles, the court should approve the sharing of the value of the debtor’s assets on a global basis.**

## **Principle 11 Non-discriminatory treatment**

**Subject to Global Principle 3, a court should not discriminate against creditors or claimants based on nationality, residence, registered seat or domicile of the claimant or on the nature of the claim.**

## **Principle 12 Adjustment of Distributions**

**Where there is more than one insolvency case pending with respect to the debtor, a creditor should not receive more through the distributions made in a particular case than the percentage recovered by other creditors of the same class in that case, having regard to distributions already received in other cases concerning the same debtor. A creditor who receives more than one distribution should account for all previous distributions as a condition to participating in a subsequent distribution in another case.**

## **Principle 13 International Jurisdiction**

**13.1. For the purposes of these Global Principles the courts or other authorities of a state should have jurisdiction to open an insolvency case in respect of a debtor when either:**

- (i) the debtor’s centre of main interests is situated within that state’s territory; or**
- (ii) the debtor has an establishment within that state’s territory.**

**13.2. Where an insolvency case is opened on the basis of Global Principle 13.1(ii), its effects should generally be restricted to those assets of the debtor situated in the state in question. Such a case may be accorded more extensive effect if an insolvency case cannot be opened under Global Principle 13.1(i) because of conditions laid down by the law of the state in which the centre of main interests is situated.**

**13.3. For the purposes of these Global Principles:**

- (i) “Centre of main interests” means the place where the debtor conducts the administration of its interests on a regular basis, to be determined on the basis of objective factors which are known to or are readily ascertainable by third parties.**

(ii) In the case of a company or legal person the place of the registered office should be presumed to be the centre of its main interests, unless the contrary is proved.

(iii) In the case of an individual the debtor's habitual residence should be presumed to be the centre of his or her main interests, unless the contrary is proved. In the case of an individual who is engaged in a business, trade or profession the debtor's professional domicile or, if there is none, the debtor's registered business address should be presumed to be his or her centre of main interests, unless the contrary is proved.

(iv) An "establishment" means a place of operations where or through which the debtor carries out an economic activity on a non-transitory basis, with human means and assets or services, to be determined on the basis of objective factors which are known to or are readily ascertainable by third parties. Such activities may be commercial, industrial or professional.

13.4. Where an insolvency case is opened on the basis of Global Principle 13.1(i), the court should determine whether the centre of main interests is situated within the territory of the forum state. For this purpose, the location of the centre of main interests should be determined as of the earliest date on which the debtor or a party with standing seeks to invoke the jurisdiction to open the insolvency case.

13.5. If the debtor's centre of main interest was previously in a different state (the "Prior State") from the state in which the insolvency case was opened, the international jurisdiction of the Prior State should not be displaced unless either (i) at the time of the alleged relocation of the centre of main interests the debtor was able to pay all debts and liabilities incurred prior to that time or (ii) the debtor has fully paid or concluded a composition or compromise in respect of its obligations incurred before the relocation of its centre of main interests. Alternatively, jurisdiction of the Prior State may be displaced if there is no undue prejudice to creditors whose claims arose from dealings with the debtor during the time when the debtor's centre of main interest was in the Prior State.

#### **Principle 14 Alternative Jurisdiction**

14.1. In the absence of international jurisdiction based on Global Principle 13.1, a court may exercise jurisdiction to open an insolvency case under its local law.

14.2. In an insolvency case where jurisdiction is based on Principle 14.1 and the local law, the court should cooperate with the court in an insolvency case in another state where jurisdiction is based on Global Principle 13.1.

14.3. In an insolvency case where jurisdiction is based on Global Principle 14.1 and the local law, the court should normally restrict its actions to assets and operations within the forum state.

#### **Principle 15 Request for recognition**

15.1. In an insolvency case where jurisdiction is based on Global Principle 13.1, courts and relevant authorities in all other states should provide access to the representative of that case and should grant recognition to that case and its representative.

15.2. A court should deny recognition to an insolvency case pending in another state if recognition would be manifestly contrary to public policy in the forum state.

15.3. In an insolvency case where jurisdiction is based on Global Principle 14.1 and the local law, a court in another state may grant such recognition and assistance to that case and its representative as permitted by the forum state's local law. For this purpose, the court may give due regard to the extent to which the court exercising jurisdiction under Global Principle 14.1

and the local law is cooperating with any insolvency case concerning the same debtor that is pending in a court exercising jurisdiction under Global Principle 13.

#### **Principle 16 Modification of Recognition**

Recognition may be modified if the court becomes aware of evidence which warrants such action. Such evidence may include evidence:

- (i) that there was fraud in the opening of the foreign insolvency case or in obtaining recognition in the recognizing court,
- (ii) that the foreign insolvency case was opened in the absence of international jurisdiction based on Principle 13,
- (iii) that the initial decision to recognize the foreign insolvency case was based on an incomplete or erroneous understanding of the relevant facts, or
- (iv) that there has been a material change of circumstances following the opening of the foreign insolvency case or its recognition by the court.

#### **Principle 17 Stay or Moratorium upon Recognition**

17.1. Unless a stay already exists because of a domestic insolvency case concerning the same debtor, if a court recognizes a foreign insolvency case as a main proceeding with respect to the debtor it should promptly grant a stay or moratorium prohibiting the unauthorised disposition of the debtor's assets and restraining actions by creditors to enforce their rights and remedies against the debtor or the debtor's assets.

17.2. In a reorganization case, the stay or moratorium should normally permit the continued operation of the debtor's business.

17.3. Where there is no domestic insolvency proceeding pending in the recognizing state, if the court recognizes a foreign insolvency case as a main proceeding with respect to the debtor, and has granted a stay or moratorium that is substantially equivalent to the stay or moratorium in a domestic insolvency case, the stay or moratorium in the main proceeding should not apply in the recognizing state and, conversely, the stay or moratorium in the recognizing state should not apply in the state of the main proceeding.

#### **Principle 18 Reconciliation of Stays or Moratoriums in Parallel Proceedings**

18.1. Where there is more than one insolvency case pending with respect to a debtor, each court should minimize conflicts between the applicable stays or moratoriums.

18.2. Where there is more than one insolvency case pending with respect to a debtor and an insolvency case in one state has been recognized as a main proceeding by the court in a second state, the stay or moratorium applicable or issued in the recognizing state should apply in a third state only to the extent that the stay or moratorium in the main proceeding does not apply.

#### **Principle 19 Abusive or Superfluous Filings**

19.1. Where there is more than one insolvency case pending with respect to a debtor, and the court determines that an insolvency case pending before it is not a main proceeding and that the forum state has little interest in the outcome of the proceeding pending before it, the court should (i)

dismiss the insolvency case, if dismissal is permitted under its law and no undue prejudice to creditors will result; or (ii) ensure that the stay or moratorium in the proceeding before it does not have effect outside that state.

**19.2. Principle 19.1 should not be applied until a main proceeding has been opened by a court that has international jurisdiction on the basis of these Global Principles.**

#### **Principle 20 Court Access**

**20.1. Upon recognition, a representative of a foreign insolvency case should have direct access to any court in the recognizing state necessary for the exercise of its legal rights.**

**20.2. Upon recognition, a representative of a foreign insolvency case that is a main proceeding should have access to any court to the same extent as a domestic insolvency administrator.**

**20.3. Upon recognition, a representative of a foreign insolvency case that is a main proceeding should be able to request the opening of a domestic insolvency case with respect to the debtor.**

#### **Principle 21 Language**

**21.1. Where there is more than one insolvency case pending with respect to a debtor the insolvency administrators should determine the language in which communications should take place with due regard to convenience and the reduction of costs. Notices should indicate their nature and significance in the languages that are likely to be understood by the recipients.**

**21.2. Courts should permit the use of languages other than those regularly used in local proceedings in all or part of the proceedings, with due regard to the local law and available resources, if no undue prejudice to a party will result.**

**21.3. Courts should accept documents in the language designated by the insolvency administrators without translation into the local language, except to the extent necessary to ensure that the local proceedings are conducted effectively and without undue prejudice to interested parties.**

**21.4. Courts should promote the availability of orders, decisions and judgments in languages other than those regularly used in local proceedings, with due regard to the local law and available resources, if no undue prejudice to a party will result.**

#### **Principle 22 Authentication**

**Where authentication of documents is required, courts should permit the authentication of documents on any basis that is rapid and secure, including via electronic transmission, unless good cause is shown that they should not be accepted as authentic.**

#### **Principle 23 Communications between Courts; Intermediaries**

**23.1 Courts before which insolvency cases or requests to recognize foreign insolvency proceedings or requests for assistance are pending should, if necessary, communicate with each other directly or through the insolvency administrators to promote the orderly, effective, efficient and timely administration of the cases.**

**23.2. Such communications should utilize modern methods of communication, including electronic communications as well as written documents delivered in traditional ways. The Global Guidelines for Court to Court Communication, set out in Section III of these Global Principles**

should be employed. Electronic communications should utilize technology which is commonly used and reliable.

**23.3.** Courts should consider the use of one or more protocols to manage the proceedings with the agreement of the parties, and approval by the courts concerned.

**23.4.** Courts should consider the appointment of one or more independent intermediaries within the meaning of Global Principle 23.5, to ensure that an international insolvency case proceeds in accordance with these Global Principles. The court should give due regard to the views of the insolvency administrators in the pending insolvency cases before appointing an intermediary. The role of the intermediary may be set out in a protocol or an order of the court.

**23.5.** An intermediary:

- (i) Should have the appropriate skills, qualifications, experience and professional knowledge, and should be fit and proper to act in an international insolvency proceeding;
- (ii) Should be able to perform his or her duties in an impartial manner, without any actual or apparent conflict of interest;
- (iii) Should be accountable to the court which appoints him or her.
- (iv) Should be compensated from the estate of the insolvency case in which the court has jurisdiction.

## **Principle 24 Control of Assets**

**24.1.** If there is not a domestic insolvency case pending with respect to the debtor, then:

- (i) upon recognition, a representative of a foreign insolvency case should be given legal control, and assistance in obtaining practical control, of the debtor's assets, wherever they are located, to the same extent as a domestic insolvency administrator;
- (ii) upon recognition, a representative of a foreign insolvency case should be permitted to remove assets to another jurisdiction, where doing so is appropriate for the purposes of the insolvency case and if there is no undue prejudice to creditors.

**24.2.** If Global Principle 24.1 applies the representative of a foreign proceeding is subject to the same level of accountability towards the court of the situs as would be required of an insolvency administrator appointed in a domestic proceeding.

## **Principle 25 Notice**

**25.1.** If an insolvency case appears to include claims of known foreign creditors from a state where an insolvency case is not pending, the court should assure that sufficient notice is given to permit those creditors to have full and fair opportunity to file claims and participate in the case. Such notice should include publication in the Official Gazette (or equivalent publication) of each state concerned.

**25.2.** For the purposes of notification within the meaning of Global Principle 25.1 a person or legal entity is a known foreign creditor if:

- (i) the debtor's business records establish that the debtor owes or may owe a debt to that person or legal entity; and
- (ii) the debtor's business records establish the address of that person or legal entity.

## **Principle 26 Cooperation**

**26.1. Insolvency administrators in parallel proceedings should cooperate in all aspects of the cases. The use of an agreement or “protocol” should be considered to promote the orderly, effective, efficient and timely administration of the cases.**

**26.2. A protocol for cooperation among insolvency administrators 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.**

## **Principle 27 Coordination**

**27.1. Where there are parallel proceedings, each insolvency administrator should obtain court approval of an action affecting assets or operations in that forum if required by local law, except as otherwise provided in a protocol approved by that court.**

**27.2. An insolvency administrator should seek prior agreement from any other insolvency administrator as to matters that concern proceedings or assets in that administrator’s jurisdiction, except where emergency circumstances make this unreasonable.**

**27.3. A court should consider whether the insolvency administrator in a main proceeding, or his or her agent, should serve as the insolvency administrator or co-administrator in another proceeding to promote the coordination of the proceedings.**

## **Principle 28 Notice among Administrators**

**An insolvency administrator should receive prompt and prior notice of a court hearing or the issuance of a court order, decision or judgment that is relevant to that administrator.**

## **Principle 29 Cross-Border Sales**

**When there are parallel insolvency proceedings and assets will be sold, courts, insolvency administrators, the debtor and other parties should cooperate in order to obtain the maximum aggregate value for the assets of the debtor as a whole, across national borders. Each of the courts involved should approve sales that will produce the highest overall price for the debtor’s assets.**

## **Principle 30 Assistance to Reorganization**

**If a court recognizes a foreign insolvency case that is a reorganization case as a main proceeding with respect to the debtor according to these Global Principles, the court should conduct any parallel domestic case in a manner that is as consistent with the reorganization objective in the main proceeding as is possible under the circumstances, with due regard to the local law.**

### **Principle 31 Post-Insolvency Financing**

**Where there are parallel proceedings, especially in reorganization cases, insolvency administrators and courts should cooperate to obtain necessary post-insolvency financing, including the granting of priority or secured status to lenders, with due regard to local law.**

### **Principle 32 Avoidance Actions**

**Where there are parallel proceedings, insolvency administrators should cooperate to reach a common position with respect to the avoidance of pre-insolvency transactions involving the debtor, with due regard to local law.**

### **Principle 33 Information Exchange**

**Insolvency Administrators in parallel proceedings should make prompt and full disclosure to each other on a continuing basis of all relevant information they have, including a list of all claims and claimants indicating whether the claims are asserted as secured, priority, or ordinary claims, and whether they are approved, disputed, or disapproved.**

### **Principle 34 Claims**

**Where there are parallel proceedings, each of which is taking place in a state whose courts have international jurisdiction with respect to the debtor according to these Global Principles, claims admissible and allowable in one proceeding should be accepted in each of the other proceedings, except as to distinct factual and legal issues arising under the other state's applicable law.**

### **Principle 35 Limits on Priorities**

**35.1. A claim that is governed by the law of a state other than that in which insolvency proceedings are taking place should in principle have only the priority it would have in a strictly territorial process conducted in the state whose law governs the claim, and restricted to assets located in that state.**

**35.2. In exceptional circumstances an exclusion of Global Principle 35.1 can be accepted.**

### **Principle 36 Plan Binding on Participant**

**36.1. If a Plan of Reorganization is adopted in a main proceeding pending in a court with international jurisdiction with respect to the debtor under Global Principle 13.1, and there is no parallel proceeding pending with respect to the debtor, the Plan should be final and binding upon the debtor and the creditors who participate in the main proceeding.**

**36.2. For this purpose, participation includes (i) filing a claim; (ii) voting on the Plan; or (iii) accepting a distribution of money or property under the Plan.**

### **Principle 37 Plan Binding: Personal Jurisdiction**

**If a Plan of reorganization is adopted in a main proceeding in a court with international jurisdiction with respect to the debtor under Global Principle 13.1, and there is no parallel proceeding pending with respect to the debtor, the Plan should be final and binding upon an unsecured creditor who received adequate individual notice and over whom the court has jurisdiction in ordinary commercial matters under the local law.**



**Global Guidelines for Court-to-  
Court Communications in  
International Insolvency Cases**

## **GLOBAL GUIDELINES FOR COURT-TO-COURT COMMUNICATIONS IN INTERNATIONAL INSOLVENCY CASES**

### **Guideline 1    Overriding objective**

**1.1. These Global Guidelines embody the overriding objective to enhance coordination and harmonization of insolvency proceedings that involve more than one state through communications among the jurisdictions involved.**

**1.2. These Global Guidelines function in the context of the Global Principles of Cooperation in International Insolvency Cases and therefore do not intend to interfere with the independent exercise of jurisdiction by national courts as expressed in Global Principles 13 and 14.**

### **Guideline 2    Consistency with Procedural Law**

**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 state. Where a Court intends to apply these Global Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted in each individual case before they are applied. Coordination of Global Guidelines between courts is desirable and officials of both courts may communicate in accordance with Global Guideline 9(d) with regard to the application and implementation of the Global Guidelines.**

### **Guideline 3    Court to Court communication**

**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 4    Court to Insolvency Administrator communication**

**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 5    Insolvency Administrator to foreign Court communication**

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

### **Guideline 6    Receiving and handling communication**

**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 Global Guideline 8 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 7 Methods of communication**

**To the fullest extent possible under any applicable law, communications from a Court to another Court may take place by or through the Court:**

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;**
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;**
- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Global Guideline 8 should apply.**

#### **Guideline 8 E-communication to Court**

**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.**
- (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 9 E-communication to Insolvency Administrator**

**In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Global Guidelines 4 and 6 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:**

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;**

**(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;**

**(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;**

**(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 10 Joint hearing**

**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 Global Guideline 8(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 Global Guideline 8(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 non-substantive matters relating to the joint hearing.**

#### **Guideline 11 Authentication of regulations**

**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 12 Orders**

**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 13 Service List**

**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 14 Limited Appearance in Court**

**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 15 Applications and motions**

**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 Court in the foreign jurisdiction or that relief be granted to permit such parties to bring such applications or motions before the Court in the foreign jurisdiction on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Global Guidelines 7 and 8 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 16 Coordination of proceedings**

**A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Global 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 17 Directions**

**Directions issued by the Court under these Global 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 Global 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 18 Powers of the Court**

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



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