INTERNATIONAL INSOLVENCY INSTITUTE

7th Annual International Insolvency Conference
June 11-12, 2007

Fordham University School of Law

New York City

GUIDING COORDINATION OF CROSS-BORDER INSOLVENCY PROCEEDINGS IN EUROPE

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1. It is five years ago now that the Insolvency Regulation entered into force in Europe. Since January 1, 2007, with the entry of Bulgaria and Romania, the European Union contains 27 Member States. The EU Insolvency Regulation which came in force in May 2002 is applicable to 26 of them (Denmark opted out). Roughly some 200 published court cases demonstrate applications of the Regulation. Cross-border insolvency proceedings in these countries are managed and realized within a model of main insolvency proceedings (opened in a Member State where the debtor has its centre of main interest, or COMI) and secondary insolvency proceedings (in other Member States, where the debtor possesses an establishment). This raises questions with regard to the coordination of these proceedings. A close and trustful cooperation between liquidators in main and secondary insolvency proceedings is indispensable in order to achieve an efficient and optimal administration of the insolvent debtor's assets.

2. The EU Insolvency Regulation is founded on the rationale that the proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. The Insolvency Regulation aims to achieve this objective which comes within the scope of judicial cooperation in civil matters within the meaning of Article 65 of the EC Treaty. The Regulation requires the coordination of the measures to be taken regarding an insolvent debtor. The form chosen is that when the centre of main interest (COMI) of the debtor is in Member State A main insolvency proceedings can be opened. In Member State B, C and/or D secondary proceedings towards the same debtor can be opened when in this other State the debtor possesses an establishment (being any place of operations where the debtor carries out a non-transitory economic activity with human means and goods) within the territory of these latter States.

3. 'Main insolvency proceedings and secondary proceedings can ... contribute to the effective realisation of the total assets *only if all the concurrent proceedings pending are coordinated*. The main condition here is that the various *liquidators must cooperate closely*, in particular by exchanging a sufficient amount of information. In order to ensure *the dominant role of the main insolvency proceedings*, the liquidator in such proceedings should be given several possibilities for intervening in secondary insolvency proceedings which are pending at the same time. For example, he should be able to propose a restructuring plan or composition or apply for realisation of the assets in the secondary insolvency proceedings to be suspended', thus recital (20) preceding the text of the EU Insolvency Regulation (italics by the author). Main insolvency proceedings, opened in one Member State do not deprive the courts in other Member States of the authority to open secondary proceedings, see Article 16(2) of the Insolvency Regulation. The universal effect of the main proceedings throughout the European Community (except for Denmark) does not apply to the secondary proceedings, opened in another Member State, whilst the effects of the secondary proceedings may not be challenged in other Member States (Article

17). Because the procedural and substantive effects of the secondary proceedings are determined by the lex concursus (Article 4 and Article 28), the focus of the secondary proceedings is the protection of local interests.

4. There are however other aspects of this primary function of secondary proceedings, which allows to view the secondary proceedings being a national proceeding, functioning in an European context:
(i) despite secondary proceedings being opened in another Member State (in which the debtor has an establishment, see Article 3(2) and Article 2(h)), the secondary proceedings are concerned with (a part of the assets and liabilities of) the same (insolvent) debtor as the main insolvency proceedings;
(ii) despite the secondary proceedings only being permitted to be proceedings as listed in Annex B, and therefore winding-up proceedings with territorial effect (Article 3(2) and Article 27), Chapter III of the Insolvency Regulation provides the liquidator appointed in the main insolvency proceedings with several powers to influence or the change the character of the secondary proceedings and to align these latter proceedings in accordance with developments in the main proceedings;
(iii) despite 'local' creditors being able to lodge claims in secondary proceedings, these proceedings are fully open for other creditors to lodge their claims too (Article 32).
It is generally acknowledged that secondary proceedings have an auxiliary function and therefore should be considered in the context of the main proceedings. The Insolvency Regulation does not aim to ring-fence these secondary proceedings. These proceedings have their formal character (listed in Annex B) of the Member State where they have been opened and comprise assets, located in the territory of that Member State. However, the concept of the universality of the main proceedings is allowed to become fragmented, but it is not to be renounced. The mutual connection between both proceedings is founded on the maxim that, ultimately, the administration concerns one debtor with one estate and one group of creditors. See recital 3, indicating that the Regulation stems from the need for 'coordination of the measures to be taken regarding an insolvent debtor's assets.' This may be referred to as the principle of unity of estate.

5. The concept of one debtor with one estate to satisfy all creditors is reflected – though less systematically – by the rights and powers assigned to the liquidator in the main insolvency proceedings by the Insolvency Regulation. The following illustrates these rights and powers:
(i) he has the power to apply for secondary proceedings in other Member States (Article 29);
(ii) he can ask liquidators in the secondary proceedings for information (Article 31(1)); and
(iii) he can demand that they cooperate with him (Article 31(2));
(iv) he can exercise the power to put forward certain proposals in the context of the secondary proceedings (pursuant to Article 31(3));
(v) he may request a stay of the process of liquidation in these secondary proceedings (Article 33(1));
(vi) he may request the termination of a stay (Article 33(2));

(vii) he may propose a rescue plan in the secondary proceedings (see Article 34(1)), also during the stay of the process of liquidation (Article 34(3));
(viii) he shall lodge in other proceedings claims which have already been lodged in the main proceedings (Article 32(2));
(ix) he has the power to participate in the other proceedings on the same basis as the creditors (Article 32(3));
(x) he has the right to request the return to the main proceedings of anything already obtained by creditors as they have satisfied their claims by any means on the assets of the debtor situated in the other Member State (Article 20); and
(xi) he has the power to collect any remaining assets from the secondary proceedings if all claims in these proceedings have been met (Article 35).

6. These powers have their origin in the Insolvency Regulation. In addition, the liquidator appointed in the main proceedings will use the powers conferred to a liquidator according to its domestic insolvency legislation, see Article 18. The recitals to the Regulation devote only a few words to the guiding notion of unity of the estate. Recital (3) states: 'The activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.' See also recital (12), explaining the characteristics of main proceedings and secondary proceedings, adding: 'Mandatory rules of coordination with the main proceedings satisfy the need for unity in the Community.' Furthermore recital (20): 'Main insolvency proceedings and secondary proceedings can, however, contribute to the effective realisation of the total assets only if all the concurrent proceedings pending are coordinated. The main condition here is that the various liquidators must cooperate closely, in particular by exchanging a sufficient amount of information', and recital (21): 'Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. (all italics by the authors).

7. To summarise, cross-border insolvency proceedings in a large part of Europe are managed and realized within a model of main insolvency proceedings (opened in a Member State where the debtor has its centre of main interest) and secondary insolvency proceedings (in other Member States, where the debtor possesses an establishment). The main liquidator has a list of powers to influence secondary proceedings. This raises questions with regard to the coordination of these proceedings. A close and trustful cooperation between liquidators in main and secondary insolvency proceedings is indispensable in order to achieve an efficient and optimal administration of the insolvent debtor's assets.

8. The footing for cooperation is expressed in Recital (20) of the EC Insolvency Regulation ("...the main condition here is that the various liquidators must cooperate closely, in particular by exchanging a sufficient amount of information ..."), which has been worded in Article 31 of the EC Insolvency Regulation. The text is as follows:

Article 31
Duty to cooperate and communicate information

1. Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.
2. Subject to the rules applicable to each of the proceedings, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to cooperate with each other.
3. The liquidator in the secondary proceedings shall give the liquidator in the main proceedings an early opportunity of submitting proposals on the liquidation or use of the assets in the secondary proceedings.

9. The absence of guidance in Article 31 EC Insolvency Regulation in general results in ad hoc and case by case communication and cooperation without a solid and practical framework which might guarantee the realisation of the overriding objective of enabling liquidators and courts to efficiently and effectively operate in cross-border insolvency proceedings in the context of the EC Insolvency Regulation.

10. The Core Group of the Academic Wing of Insol Europe, in its second meeting in October 2004 (Prague), discussed a proposal to address the principle issue of the liquidators' duties of communication and cooperation in cross-border insolvency instances. The Core Group tossed the idea of the possibility/necessity of the establishment of a (non-binding) set of standards for communication and cooperation in cross-border insolvency cases, which are a subject to the application of the EC Insolvency Regulation. The Core Group in general agreed that the proposal should be supported and it established a Task Force with the mandate to draft a plan, which was approved early 2005. The Task Force is co-chaired by professor Bob Wessels (Amsterdam, the Netherlands) and professor Miguel Virgós (Madrid, Spain), both members of III.

11. The following European Communication and Cooperation Guidelines For Cross-border Insolvency are based on several papers of the individual members of the Task Force providing an overview and critical assessment of literature and court cases with regard to Article 31 of the EC Insolvency Regulation, of literature and court cases concerning non-EU examples of cross-border communication and cooperation in cross-border insolvency cases and of literature and the EC Treaty related regulation and court cases concerning cross-border communication and cooperation in general civil and commercial law matters, within the framework of the EC Treaty. The members of the Task Force are listed in Appendix II.

12. The Task Force has been guided by three primary reasons for focusing on the development of 'standards' for cross-border communication and cooperation between liquidators in the EU:
a. A set of Guidelines reflects (i) the central principle of cooperation and coordination between insolvency proceedings pending in two or more Member States, where the text of the Regulation is left open, and (ii) a realistic set of Guidelines should ensure as best as possible to make the Regulation work in practice, so that either liquidation or reorganisation of the debtor's estate is dealt with efficiently.
b. A set of Guidelines fits in the current environment within which in the field of cross-border insolvency efficient and effective solutions have been developed

based on models reflecting cooperation among courts and liquidators (e.g. Protocols; UNCITRAL Model Law). Several Member States have enacted provisions relating to communication and cooperation in its respective national legislation, inspired on these examples.
c. The insolvency profession in Europe has reached a stage in its development that demands heightened attention to strong, international standards of professionalism. A consistent set of Guidelines regarding the organisation, the contents and the quality of communication and cooperation processes (i) aims to be beneficial to the goals of the insolvency proceedings within which they will function, (ii) increases the strength and the reputation of the profession, and (iii) may support courts in providing tailor-made orders or insolvency (related) judgments in general.

13. The Task Force, assigned with the project, has organized its work according to a plan, which would ensure that during its operation different stakeholders and interest groups were involved in the outcome. In addition to several discussions of several drafts between the members of the Task Force, the Task Force has been guided in its work by a Review Group, committed to review drafts of the Guidelines and comment on their consistency and practical use. The members of the Review Group are listed in Appendix II.

14. The outcome of the Task Force's work, including a first round of comments and discussion with the Review Group, was a non-public draft of the Guidelines (May 2006). This draft was explained and discussed at the INSOL International Academics meeting in Scottsdale, Az., USA, May 20-21, 2006. We then prepared a public draft of the Guidelines, to be discussed during the Annual Conference of INSOL Europe end September 2006 in Bucharest, Romania. Also this public draft was the result of consultation both within the Task Force as with the Review Group. Compared to text distributed during the Scottsdale conference the subsequent discussions and evaluation resulted in a number of Guidelines of 18 as compared to Scottsdale, where the draft contained 22 Guidelines. The main reasons for the changes were (i) the rearrangement of certain sections, and (ii) the view that in a stage of a first step framework some of the proposed guidelines seemed superfluous (Guideline 13 - Notices Among liquidators; Guideline 17 - Informal processes; Guideline 19 - Interim measures; Guideline 22 – Definitions), combined with (iii) the idea that some of the proposed guidelines might prove to be too complex in this stage (Guideline 16 - Corporate Groups; Guideline 21 - Actions to be taken outside the territory of the Member States where proceedings are pending).

15. The public draft of September 2006 of the Guidelines, including a brief Explanation, was discussed extensively during the general meeting at the Annual Conference of INSOL Europe in Bucharest, assembling over around 300 insolvency practitioners. Additionally in a workshop during this Conference specific Guidelines were discussed, and during the treatment of a hypothetical case twenty questions were raised and answered by the audience by way of electronic voting. This draft again has been subject for discussion during the Annual Conference of the Insolvency Lawyers Association, Oxford, March 2-3, 2007, and the INSOL International Academics meeting in Cape Town, South

Africa, March 17-18, 2007. We thank all the participants of these meetings for their remarks and suggestions made.
In the light of the outcome of these discussions, Miguel Virgós and I have reconsidered the content of the draft Guidelines. This has led to the introduction of Guideline 1.2 and 2.3, and to a full consideration of Guideline 11.2. Texts of several draft Guidelines have been moved to the Explanation, in an aim to come to a ready readable text. We also expanded the Explanation and we will finalise the Guidelines and Explanation after a round of consultation in April and May 2007 with the Task Force and the Review Group. Any comments of III memberscould be taken into account during our final drafting process.

16. The authors consider the European Communication and Cooperation Guidelines For Cross-border Insolvency, in their final form, to function as a first step in a framework to realize the objective of enabling liquidators and courts to efficiently and effectively operate in cross-border insolvency proceedings in the context of the EC Insolvency Regulation. In individual cases the Guidelines are minimum requirements and may need to be supplemented by other measures designed to address particular conditions. The Guidelines are not a cookbook of recipes certain to succeed in all cases; they should inspire all actors to tailor solutions in specific cases. The Guidelines strongly endorse the use of agreements concerning cooperation or 'protocols' as a means to codify coordination in decision making procedures related to two or more insolvency proceedings in two or more Member States' jurisdictions. We are pleased with INSOL Europe's decision to install a 'Protocol Committee' to further develop certain forms or templates for such protocols.

17. We intend the Guidelines to serve as a sound and well-tailored framework for cross-border cooperation and as a basic reference for individual liquidators, professional insolvency practitioners' associations, judges and other public authorities in all EU Member States and internationally. It will most likely be for national professional associations of insolvency practitioners to introduce or to strengthen ethical or professional rules concerning a relative new subject: cross-border communication and cooperation. These associations may consider to use the Guidelines to review their existing rules and to initiate a plan designed to address any deficiencies as quickly as is practical within their authority. We are confident that the Guidelines reflect present consensus within larger groups of insolvency practitioners and specialised scholars. INSOL Europe is in the process of establishing a permanent Communication/Cooperation Standards Committee, supervising the roll out of the Guidelines, to review them on an ongoing basis and police and monitor their application in practice or their implementation by associations. It is the purpose that judges will participate in this Committee. These associations are encouraged to submit any comments or suggestions for improvement or for additional Guidelines to said Committee.

18. We believe that achieving consistency with the Guidelines in Member States will be a significant step in the process of improving communication and cooperation between insolvency proceedings pending in two or more Member States. We recognise however that the speed with which this objective will be achieved will vary. In some Member States changes in the legislative framework may prove to be necessary. In such cases it is essential that national legislators

give urgent consideration to the changes necessary to ensure that the Guidelines can be applied in all material respects.

19. The Guidelines presuppose that liquidators act with the appropriate knowledge of the EC Insolvency Regulation and its applicability in practice, which would include the operation of these Guidelines. We encourage INSOL Europe and other professional organisations of lawyers, accountants or judges to engage in structured training, preferable on a European level in order to get acquainted to the multi-jurisdictional and multi-cultural setting within which the Regulation and these Guidelines operate.

20. In closing, we express our sincere appreciation to our colleagues on the Task Force and our consultants from the Review Group. Collectively they have put time, energy, intellect and sense of purpose in the development of the Guidelines.

European Communication and Cooperation Guidelines For Cross-border Insolvency (Final Draft April 2007)

Guideline 1 Overriding objective

1.1. These Guidelines embody the overriding objective of enabling courts and liquidators to operate efficiently and effectively in cross-border insolvency proceedings within the context of the EC Insolvency Regulation.
1.2. In achieving the objective of Guideline 1.1. the interests of creditors are paramount and are treated equally.
1.3. All interested parties in cross-border insolvency proceedings are required to further the overriding objective as set out above in Guideline 1.1.

Guideline 2 Aim

2.1. The aim of these Guidelines is to facilitate the coordination of the administration of insolvency proceedings involving the same debtor, including through the use of a governance protocol.
2.2. In particular, these Guidelines 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 (which includes the debtor's undertaking or business) on a world-wide basis;
(iii) The sharing of information in order to reduce the costs involved; and
(iv) The avoidance or minimization of litigation, costs and inconvenience to all parties affected by proceedings.
2.3. In individual insolvency proceedings, the Guidelines require cases to be administered with a view:
(i) To ensure that the creditors' interests are paramount and that they are on an equal footing;
(ii) To save expense;
(iii) To deal with the debtor's estate in ways which are proportionate to the amount of money involved, to the importance of the case, to the complexity of the issues, and to the number of jurisdictions involved; and
(iv) To ensure that the case is dealt with timely and fairly.

Guideline 3 Status

3.1. Nothing in these Guidelines is intended:
(i) To interfere with the independent exercise of jurisdiction by each of the national courts involved, including their respective authority or supervision over a liquidator;
(ii) To interfere with national rules or ethical principles by which a liquidator is bound according to applicable national law and professional rules; or
(iii) To confer substantive rights or to interfere with any function or duty arising out of the EC Insolvency Regulation or to impinge on applicable national law.

Guideline 4 Liquidator

4.1. A liquidator is any appointed person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of its affairs, either in reorganisation or in liquidation proceedings.
4.2. A liquidator is required to act with the appropriate knowledge of the EC Insolvency Regulation and its application in practice.
4.3. A liquidator is required to act honestly, objectively, fairly and expeditiously in dealing with all parties concerned, including the courts.

Guideline 5 Direct Access

5. Any foreign liquidator should be granted direct access to any court necessary for the exercise of legal rights to the same extent that a national liquidator is so permitted.

Guideline 6 Communications

6.1. Liquidators are required to communicate with each other directly and as soon as they are appointed.
6.2. The liquidator appointed in the main proceedings should always take the initiative to start or to continue communications with other liquidators.
6.3. Substantive replies by a liquidator to queries from other liquidators should always be responded to as soon as reasonably practicable.

Guideline 7 Information

7.1. Liquidators are required to provide prompt and full disclosure to all other liquidators involved of all relevant information about the existence and status of the insolvency proceedings in which they have been appointed.
7.2. Liquidators are required to provide information periodically which may be relevant to the other proceedings detailing the conduct of the proceedings.
7.3. Liquidators in possession of such information are required to inform the courts insofar as they are subject to any reporting duties under national law, of any material development in any such other proceedings.
7.4. A foreign liquidator should be permitted to use all legal methods to obtain information that would be available to a creditor or to a liquidator in any national insolvency proceedings.
7.5. To the fullest extent permissible under any applicable law, relevant non-public information should be shared by a liquidator with other liquidators subject to appropriate confidentiality arrangements to the extent that this is commercially and practically sensible.
7.6. The duty to provide information in the meaning of this Guideline includes the duty to provide copies of documents at reasonable costs on request.

Guideline 8 Information by a liquidator in secondary proceedings

8.1. The liquidator in any secondary proceedings should provide all relevant information to the liquidator in main proceedings without any delay so as to facilitate the submission of proposals on the liquidation or use of assets in secondary proceedings.
8.2. The liquidator in any secondary proceedings is encouraged to provide advice to the liquidator in the main proceedings concerning any views on how to best to proceed.
8.3. The liquidator in main proceedings is encouraged to involve liquidators in any secondary proceedings in devising those proposals referred to above in Guideline 8.1.
8.4. Where a reorganisation or rescue plan can be adopted in secondary proceedings which, in attaining the aims pursued under Guideline 2.2(ii), would give better value to creditors in main proceedings or reduce the overall size of debts, the liquidator in main proceedings and the courts shall take advantage of the opportunity to promote the adoption of this plan.

Guideline 9 Authentication

9.1. Except to the extent provided for under any applicable law, where existing authentication of documents is required, methods should be established so as to permit rapid authentication and secure transmission of faxes and other electronic communications relating to cross-border insolvencies on any basis that permits their acceptance as official and genuine communications by liquidators and courts in other jurisdictions.
9.2. To the extent permissible under national law, courts are encouraged to provide or publish judgments, orders or rulings also in languages other than those regularly used in proceedings or encourage translations to be made as much as possible.

Guideline 10 Language

10.1. Liquidators shall determine the language in which communications take place on the basis of convenience and the avoidance of costs. The court is advised to allow use of other languages in all or part of the proceedings if no prejudice to a party will result.
10.2. Courts are encouraged, to the maximum extent permissible under national law, to accept any documents related to those communications in language decided upon under Guideline 10.1, without the need for a translation into the language of proceedings before them.

Guideline 11 Obligations incurred by and fees of liquidators

11.1. Obligations incurred by the liquidator during proceedings and the liquidator's fees are funded from the assets within those proceedings in which the liquidator is appointed.
11.2. Obligations and fees incurred by the liquidator in the main proceedings prior to the opening of any secondary proceedings but concerning assets to be included in the estate in principle will be funded by the estate corresponding to the secondary proceedings.

Guideline 12 Cooperation

12.1. Liquidators are required to cooperate in all aspects of the case.
12.2. Liquidators ensure that cooperation takes place with other liquidators with a view to minimising conflicts between parallel proceedings and maximising the prospects for the

rehabilitation and reorganization of the debtor's business or the value of the debtor's assets subject to realisation, as may be the case.
12.3. Cooperation is intended to address all issues that are important to the actual case.
12.4. Cooperation may be best attained by way of an agreement or "protocol" that establishes decision-making procedures, although decisions may continue to be made informally as long as they are compatible with the substance of any such agreement or "protocol".
12.5. In case where any matter is not specifically provided for within the protocol, the liquidators shall act in a manner designed to promote the overriding objective set out above in Guideline 1.1.

Guideline 13 Cross-Border Sales

13.1. Where during any period of cooperation between liquidators in main and any secondary proceedings assets are to be sold or otherwise disposed of, every liquidator should seek to sell these assets in cooperation with the other liquidators so as to realise the maximum value for the assets of the debtor as a whole.
13.2. Any national court, where required to act, should approve those sales or disposals that will produce such maximum value.

Guideline 14 Assistance in Reorganization

14.1. Where main insolvency proceedings are aimed at ensuring the rehabilitation and reorganisation of the debtor's business, all other liquidators shall cooperate in any manner consistent with the objective of reorganisation or the sale of the business as a going concern wherever possible, mindful of the interests protected by local insolvency proceedings.
14.2. Liquidators should cooperate so as to obtain any necessary post-commencement financing, including through the granting of priority or secured status to lenders providing finance to the debtor and related entities as may be appropriate and insofar as permitted under any applicable law.

Guideline 15 Coordination between secondary proceedings

15. Liquidators in all secondary proceedings are required to comply with these Guidelines.

Guideline 16 Courts

16.1. Courts are advised to seek to give effect to the overriding objective of enabling courts and liquidators to operate efficiently and effectively operate in cross-border insolvency proceedings within the context of the EC Insolvency Regulation, in the meaning of Guideline 1.
16.2. Courts are advised to operate in a cooperative manner to resolve any dispute relating to the intent or application of these Guidelines or the terms of any cooperation agreement or protocol.
16.3. Courts are advised to consider whether an appointment of the liquidator in main proceedings or a nominated agent of such liquidator as a liquidator or a co-liquidator in

secondary proceedings would better ensure coordination between different proceedings under the courts' supervision.

16.4. To the maximum extent permissible under national law, courts conducting insolvency proceedings or dealing with requests for assistance or deciding on any matters relating to communications from other courts should cooperate with each other directly, through liquidators or through any person or body appointed to act at the direction of the courts.

16.5. Courts should encourage liquidators to report periodically, as part of national reporting duties, on the way these Guidelines and/or agreed Protocols are applied, including any practical problems which have been encountered.

Guideline 17 Notices

17.1. Notice of any court hearing or the making of any order by a court should be given to each of the liquidators at the earliest possible point in time where the hearing or order is relevant to that liquidator.

17.2. Where a liquidator cannot be present in person before the court, the court is advised to invite the liquidator to communicate any observations to the court prior to any order being made.

17.3. The liquidators should provide for the keeping of an accessible record of notices in the meaning of Guideline 17.1, which shall be regularly updated, to note the dates and relevant descriptions of any legal documents communicated, including those filed or transferred electronically.

Guideline 18 Scope

18. Whilst the aim of these Guidelines is to facilitate the coordination of the administration of insolvency proceedings involving the same debtor (including through the use of a protocol), liquidators or administrators and courts outside the scope of the EC Insolvency Regulation are encouraged, wherever possible, to use these Guidelines so as to facilitate or increase the prospects of cooperation in other proceedings taking place.

Appendix I

Checklist Protocol

A Protocol is designed to apply within the framework of the EC Insolvency Regulation and all liquidators should be acquainted with the terms referred to in the Regulation, the Guidelines and in a Protocol. See Guideline 4.1. In practice, cooperation – and therefore a Protocol – will particularly refer to certain basic requirements and to specific issues to be addressed in the cross-border insolvency case at hand.

Basic requirement for a Protocol

1. A clause should be inserted, stating that nothing contained in the protocol shall be construed to increase, decrease or otherwise affect in any way the independence, sovereignty or jurisdiction of the relevant national courts.
2. An additional clause should be inserted, stating that the courts involved shall be entitled at all times to exercise its independent jurisdiction and authority with respect to matters presented to the courts and the conduct of the parties appearing in such matters, including the court's ability to provide appropriate relief on an *ex parte* basis or a limited notice basis.
3. A clause could be inserted, stating that where there is any discrepancy between the Protocol and the Guidelines either one of them (the Protocol or the Guidelines) will prevail.

Basic requirements with regard to liquidators

1. Statement of the status of the liquidators.
2. Statement that each of the liquidators is subject only to the jurisdiction of its own court.
3. Statement of the right of each of the liquidators to be heard as a foreign representative in the other insolvency proceedings.
4. Statement of each of the liquidators that they will communicate and cooperate with each other as best as possible under the application of the European Communication and Cooperation Guidelines For Cross-border Insolvency.

Basic requirements with regard to the debtor

1. Statement of identity of the debtor and its management.
2. Statement of the involvement of the debtor prior to certain steps taken.

Basic requirement with regard to the proceedings

1. Statement of type (main, secondary) and nature (domestic name) of the insolvency proceedings.
2. Statement of specific topics, like mandatory involvement of certain third parties or bodies and to certain mandatory forms to use.
3. Statement of the use of language.
4. Statement of division of costs.
5. Statement relating to methods of exchanging and sharing information.

Specific issues for cooperation

1. The goal of co-operation.
2. The performance of certain acts and timescales to realise this goal.
3. The coordination of issuing information to be communicated to creditors.
4. The coordination of lodging of claims.

5. The sharing of information on claims lodged, the verification and disputes concerning claims.
6. The ranking of creditors.
7. The description and disposal of relevant assets.
8. The actions planned or underway in order to recover assets, including action to obtain payment from debtors.
9. The location of assets.
10. The actions to obtain payment from debtors.
11. The initiation of actions to set aside detrimental acts.
12. The filing of actions against third parties in relation to the insolvent company.
13. The right to demand performance or to terminate an executory contract.
14. The exercise of any voting rights.
15. The decisions relating to (post-commencement) financing, including the provision of security.
16. The filing of additional insolvency petitions concerning establishments in other Member States.
17. The process of drawing up or the submission of a liquidation or reorganisation plan.
18. The distribution of any kind of dividends.
19. The application of the hotch-pot rule.
20. The applicable law on certain issues.
21. The closure of any insolvency proceedings and its effect on the continuation of other insolvency proceedings.

Appendix II

European Communication and Cooperation Guidelines For Cross-border Insolvency

Task Force

- Paul Omar, Associate Professor University of Sussex, United Kingdom;
- Klaus Pannen, insolvency practitioner, partner White & Case, Hamburg, Germany;
- Susanne Riedemann, associate White & Case, Hamburg, Germany;
- Anker Sörensen, Medus Devaux Sorensen, Paris, France;
- Professor Miguel Virgós, Universidad Autónoma de Madrid; Uría Menéndez, Madrid, Spain;
- Professor Bob Wessels, Vrije University, Amsterdam, the Netherlands, Chair;
- Willem van Nielen, attorney-at-law, Udink & De Jong, The Hague, the Netherlands, secretary of the Task Force.

Review Group

- Jan van Apeldoorn, Attorney-at-law, Amsterdam, The Netherlands; former member of several Technical Committees of INSOL Europe;
- Neil Cooper, Partner Corporate Advisory & Restructuring Group, Kroll, London, United Kingdom; Past President of Insol Europe and INSOL International;
- Isabelle Didier, Insolvency Practitioner, Paris, France; Former President Insol Europe; Chair “Best Practices” Committee of Insol Europe;
- Professor Eric Dirix, University of Leuven (Belgium) and Justice Supreme Court Belgium;
- Honourable James Farley, Senior Counsel to McCarthy Tetrault LLP, Toronto, formerly Justice in the Ontario Superior Court of Justice, Toronto, Canada; Member of the Committee on Cross Border Communications in Insolvency Cases, International Insolvency Institute (III);
- Richard Gitlin, Gitlin & Company, Hartford (CT), USA. Past president of the American Bankruptcy Institute;
- R. Han C. Jongeneel, Justice District Court (Bankruptcy Chambers), Amsterdam, The Netherlands;
- Professor Sebastian Kortmann, University of Nijmegen, The Netherlands; Chair Core Group Academic Wing INSOL Europe;
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