

INSOL GLOBAL INSOLVENCY PRACTICE COURSE

MODULE B, SESSION 18 – COOPERATION AND COORDINATION IN PRACTICE

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Overview of session

The Cooperation and Coordination in Practice session is aimed at introducing students to the use of protocols and other coordination tools. It is intended that the in-class session will be an active session with an opportunity for the students to work with Fellows on negotiating and drafting sample protocols based on an assignment to be distributed shortly before the session but completed within its duration. The focus will be on a set of protocols common to most cross-border cases so students become familiar with those issues and the in-class component will include the negotiation of a potentially difficult protocol.

Session material

1. UNCITRAL Model Law on Cross-Border Insolvency (1997) (**Model Law**) – Chapters V and VI

Available at https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency
2. American Law Institute and International Insolvency Institute Global Principles for Cooperation in International Insolvency Cases (2012) (**ALI-III Global Principles**)

Available at https://www.iiiglobal.org/sites/default/files/ALI-III%20Global%20Principles%20booklet_0.pdf
3. European Union Cross-Border Insolvency Court-to-Court Cooperation Principles and Guidelines (2014) (**JudgeCo Principles and Guidelines**)

Available at <https://www.iiiglobal.org/sites/default/files/media/EU%20Cross-Border%20Insolvency%20Court-to-Court%20Cooperation%20Principles.pdf>
4. European Communication and Cooperation Guidelines for Cross-Border Insolvency (2007) (**CoCo Guidelines**)

Available at <https://www.insol-europe.org/download/documents/1113>
5. Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Matters (2016) (**JIN Guidelines**)

Available at <http://www.jin-global.org/content/jin/pdf/Guidelines-for-Communication-and-Cooperation-in-Cross-Border-Insolvency.pdf>

6. Judicial Insolvency Network Modalities of Court-to-Court Communication (2019) (**JIN Modalities**)

Available at http://jin-global.org/content/jin/pdf/Modalities_for_court-to-court_communication.pdf

7. Supreme Court of the Republic of Singapore, Registrar's Circular No 7 of 2020, Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters and Modalities of Court-to-Court Communication, 19 June 2020

Available at <https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-7-2020---guidelines-for-communication-and-cooperation-between-courts-in-cross-border-insolvency-matters-and-modalities-of-court-to-court-communication.pdf>

Reflects Supreme Court of Singapore's adoption of the JIN Guidelines and JIN Modalities – referenced here for illustrative purposes

8. Federal Court of Australia, Cross-Border Insolvency Practice Note: Cooperation with Foreign Courts or Foreign Representatives, 31 January 2020

Available at <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-xbdr>

Reflects Federal Court of Australia's adoption of the JIN Guidelines and JIN Modalities – referenced here for illustrative purposes

9. *Kelly, Re Halifax Investment Services Pty Ltd (in liq) (No 5)* [2019] FCA 1341

Available at [http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2019/1341.html?context=1;query=\[2019\]%20fca%201341;mask_path=](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2019/1341.html?context=1;query=[2019]%20fca%201341;mask_path=)

Federal Court of Australia held that it could make a request to the New Zealand High Court for there to be a joint hearing in relation to a pooling application for funds the subject of Australian and New Zealand liquidations. Note that the joint hearing was ultimately held by the Federal Court of Australia and the High Court of New Zealand between 30 November 2020 and 9 December 2020

10. *Re Latam Finance Limited* (unreported, 24 August 2020, FSD 105, 106 and 154 of 2020)

Available at <https://files.lbr.cloud/public/2020-08/Latam%20Cayman%20protocol%20judgment.pdf>

Grand Court of the Cayman Islands approved a protocol for mutual cooperation and assistance and direct communications between itself and

courts in New York, Colombia and Chile concerning a Chapter 11 restructure of an entity under the US Bankruptcy Code which was based on the ALI-III Guidelines

11. *Nortel Networks Corporation* – Justice Newbould, Superior Court of Justice, Ontario, 12 May 2015 ONSC287 – extract from judgment dealing only with protocols. For the US judgment see (but do not read for the session) *Nortel Networks Inc.* – Judge Gross, US Bankruptcy Court, Delaware 12 May 2015 WL2374351 (Bkrcty. D. Del.)
12. Cross Border Protocol for the Lehman Brothers Group of Companies
13. L Peacock, 'A Tale of Two Courts: The Novel Cross-Border Bankruptcy Trial' (2015) 23 *American Bankruptcy Institute Law Review* 543
14. P Zumbro, 'Cross Border Insolvencies and International Protocols - An Imperfect but Effective Tool' (2010)11(2) *Business Law International* 157
15. P Omar, 'Judicial Cooperation in the Post-Singularis World' (2018) 15(1) *International Corporate Rescue*
16. B Wessels and G Boon, 'When Soft Law Instruments Matter: OBLB Influences Cayman Islands' Judgement Approving Cross-Border Insolvency Protocol', *Oxford Business Law Blog*, 25 November 2020

Available at <https://www.law.ox.ac.uk/business-law-blog/blog/2020/11/when-soft-law-instruments-matter-oblb-influences-cayman-islands>
17. N Lupton, M Hecht and Z Nolan, 'Cayman Communication: The Grand Court of the Cayman Islands Approves Direct Court-to-Court Communications Protocol for the First Time in *Re Latam Finance Limited*' (2020) 17(6) *International Corporate Rescue*

Available at https://www.walkersglobal.com/images/Cayman_Communication_-_The_Grand_Court_of_the_Cayman_Islands_Approves_Direct_Court-to-Court_Communications_Protocol_for_the_First_Time_In_Re_LATAM_Finance_Limited_and_others.pdf
18. Scott Atkins, 'Enhancing Efficiency and Rescue Outcomes in Cross-Border Insolvency Matters: The role of Multilateral Cooperation Protocols and Judicial Diplomacy' (2023) 20(3) *International Corporate Rescue* 145.
19. The Honourable Justice Jacquie Gleeson, 'Judicial Cooperation in Cross-Border Insolvency' (2019) 46(8) *Brief* 26.
20. Supreme Court of Singapore and Federal Court of Malaysia, Protocol on Cross-Border Insolvency Matters (2021).
21. Supreme Court of Singapore and Supreme Court of Korea, Memorandum of Understanding for Judicial Cooperation (2020).

22. Joint Record of Meeting, Government of the Hong Kong Special Administrative Region and the Supreme People's Court of the People's Republic of China (14 May 2021).

Source material – not for reference during the session but as a source for future consultation:

23. United States Bankruptcy Court Southern District of New York, Procedural Guidelines for Coordination and Cooperation Between Courts In Cross-Border Insolvency Matters, 17 February 2017

Available at <http://www.nysb.uscourts.gov/sites/default/files/m511.pdf>

24. UNCITRAL Practice Guide on Cross-Border Insolvency Co-Operation.

Available at
http://www.uncitral.org/pdf/english/texts/insolven/Practice_Guide_Ebook_eng.pdf