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Singapore, Delaware and New York Courts Adopt Cross-Border Insolvency Cooperation Guidelines



**IN
SHORT**

The Action: Courts in Singapore and the states of New York and Delaware have formally implemented Guidelines for Communication and Cooperation between Courts in Cross-border Insolvency Matters.

The Motivation: The Guidelines were developed to improve the efficiency and effectiveness of cross-border insolvency proceedings and to encourage coordination and cooperation among relevant courts.

Looking Ahead: Expect the Guidelines to be implemented in other significant jurisdictions.

On February 1, 2017, the Supreme Court of Singapore and the U.S. Bankruptcy Court for the District of Delaware announced that they had formally implemented Guidelines for Communication and Cooperation between Courts in Cross-border Insolvency Matters ("Guidelines"). The U.S. Bankruptcy Court for the Southern District of New York adopted the Guidelines on February 17, 2017. The Guidelines are set forth in the [Registrar's Circular No.1 of 2017](#) in Singapore, [Local Bankruptcy Rule 9029-2](#) in Delaware, and [General Order M-511](#) in New York.

The stated purpose of the Guidelines is "to improve the efficiency and effectiveness of cross-border insolvency proceedings and to enhance coordination and cooperation among courts under whose supervision such proceedings are being conducted." Their objective is to improve efficiency in complex cases, which will benefit all stakeholders by minimizing litigation, time, and expense.

The Guidelines were developed by judges from several jurisdictions, including Australia, Bermuda, the British Virgin Islands, Canada, the Cayman Islands, England and Wales, Singapore, and the United States, who participated in discussions at an October 2016 meeting of the Judicial Insolvency Network in Singapore. The Guidelines are noteworthy not only because they provide a framework for cooperation and communication in cross-border insolvency proceedings, but because the initiative represents the first time that such a common framework has been adopted (and now implemented) by courts. Previously, communication between courts involved in parallel insolvency proceedings was often nonexistent or poorly coordinated, in many cases achieved by means of ad hoc protocols. This created significant delay and uncertainty and sometimes resulted in conflicting rulings from the courts involved.

In Singapore, the adoption of the Guidelines was part of an initiative designed to transform the country into a hub for international restructuring. Part of that initiative involves Singapore's enactment of a new [corporate bankruptcy law](#). It is anticipated that the Guidelines will be implemented in other key jurisdictions, including the U.K., Australia, and the British Virgin Islands.



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The Guidelines are briefly summarized below:

Guideline 1—Courts should encourage administrators in parallel insolvency proceedings (e.g., liquidators, trustees, judicial managers, debtors-in-possession, or estate fiduciaries) to cooperate.

Guideline 2— The Guidelines may be made applicable to a particular parallel proceeding (in whole or in part) if the court enters an order or protocol to that effect.

Guideline 3—A protocol or order making the Guidelines applicable in a parallel proceeding should promote the efficient and timely administration of the proceedings.

Guideline 4—The Guidelines are not intended to interfere with the courts' jurisdiction over a proceeding, prevent it from refusing to take an action that would be manifestly contrary to public policy or violate the interests of stakeholders, alter substantive rights, or encroach upon any applicable law.

Guideline 5—A protocol or order under the Guidelines is procedural, except to the extent specifically provided in such protocol or order.

Guideline 6—In interpreting the Guidelines or any related protocol or order, due regard shall be given to their international origin and the need to promote good faith and uniformity in their application.

Guideline 7—Courts presiding over parallel proceedings may communicate by various means for the purpose of rendering decisions and coordinating and resolving any procedural, administrative, or preliminary matters.

Guideline 8—In connection with communications between courts, parties may ordinarily be present, in which case advance notice of a communication shall be provided. Communications shall be recorded and a transcription made available to the parties.

Guideline 9—A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction.

Guideline 10—A court may authorize a party to appear before a foreign court, subject to approval of the foreign court.

Guideline 11—A court may authorize a party to a foreign proceeding to appear on a specific matter without thereby becoming subject to its jurisdiction for any purpose other than the specific matter in question.

Guideline 12—A court shall generally recognize and accept as authentic the provisions of statutes, regulations, and rules of court applicable to the proceedings in other jurisdictions.

Guideline 13—A court shall generally accept that orders made in the proceedings in other jurisdictions were properly entered and accept that such orders require no further proof for purposes of the proceedings before it.

Guideline 14—Any protocol or order made under the Guidelines is subject to such modifications and extensions as may be considered appropriate by the court consistent with the Guidelines and developments in the parallel proceedings.

Annex A—Setting forth guidelines on the conduct of joint hearings.

THREE KEY TAKEAWAYS

1. The result of a collaboration by judges from at least nine jurisdictions, the Guidelines should make cross-border insolvency matters more efficient.
2. Adoption by Singapore was part of the nation's continued effort to transform itself into a center for international restructuring.
3. Beyond the structure they can bring to international insolvency proceedings, the Guidelines are significant because the initiative marks the first time a common framework has been adopted and implemented by courts across borders.

CONTACTS



Corinne Ball
New York



Sushma Jobanputra
Singapore



Ben Larkin
London

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