

CAYMAN ISLANDS



PRACTICE DIRECTION NO. 1 OF 2018



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Court-to-court Communications and cooperation in cross-border insolvency and restructuring cases

The Guidelines – what they cover and when they should be used.

1. This practice direction deals with the use and adoption in cases pending before the Grand Court of the Cayman Islands (Court) of published guidelines relating to court-to-court communications and cooperation in cross-border insolvency and restructuring proceedings.
2. There are two main sets of guidelines (Guidelines) for court-to-court communications and cooperation which might be adopted in this jurisdiction, with appropriate modifications. These are the American Law Institute/International Insolvency Institute Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases and The Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters. Copies of the current versions of both sets of Guidelines are attached to this Practice Direction.
3. The Guidelines primarily cover the procedural rules that may be adopted and applied in particular cross-border cases for regulating the manner of communications between the courts involved, the appearance of counsel in each court, notification to parties in parallel proceedings, the acceptance as authentic of official documents or orders made in the foreign jurisdiction or court and joint hearings. They are to be applied either by being incorporated in a protocol between the respective

officeholders which protocol is then approved by the Court (and other courts involved as required) or by a separate order of the Court without a protocol (and orders of the other courts involved as required), in each case subject to such modifications as may be required in the circumstances.

4. The Guidelines are relevant where the insolvency or restructuring proceedings are being supervised by, or involve related applications to, courts in more than one jurisdiction. Such proceedings will include liquidation (including provisional and voluntary liquidation) and other insolvency or restructuring proceedings involving applications to court. Accordingly, the Guidelines will be relevant to schemes of arrangement relating to a company being supervised by the Court which also involve a parallel scheme (or debt adjustment proceeding) or ancillary proceedings in another jurisdiction (and may also be relevant in cases in which the Court has appointed a receiver or other officer of the Court and where the Cayman Islands Monetary Authority has appointed a controller pursuant to the Cayman Islands regulatory laws). The Guidelines can apply whether the officeholder is appointed by the Court or is appointed out of Court and whether the person is appointed in respect of a company (incorporated in the Cayman Islands or abroad) other legal entity (established in the Cayman Islands or abroad) or an individual.
5. Officeholders appointed in the Cayman Islands, companies subject to restructuring proceedings supervised by the Court and other interested parties involved in cross-border insolvency cases should consider, at the earliest opportunity, whether to incorporate some or all of the Guidelines with suitable modifications either into an international protocol to be approved by the Court or an order of the Court adopting the Guidelines.

Official liquidators of Cayman Islands companies

6. Official liquidators of Cayman Islands incorporated companies subject to an official liquidation under Part V of the Companies Law (2016 Revision) are already under a duty, pursuant to Order 21, r.2(1) of the Companies Winding Up Rules (CWRs), to consider whether or not it is appropriate to enter into an international protocol with any foreign officeholder (in a case in which the company in liquidation is subject to a concurrent bankruptcy proceeding under the law of a foreign country or has assets located in a foreign country which are the subject of a bankruptcy proceeding or receivership under the law of that country).

The purpose of such a protocol is to promote the orderly administration of the estate of the company to avoid duplication of work and conflict between the official liquidator and the foreign officeholder (CWR 0.21, r.2(2)) and the protocol only takes effect when approved both by the Court and the foreign court (CWR 0.21, r.2(3)). The CWRs provide that the protocol may define and allocate responsibilities between the official liquidator and the foreign officeholder in respect of the various matters set out in CWR 0.21, r.3. These include procedures for the exchange of information between the officeholders; procedures for reporting to creditors and/or contributories and procedures for coordinating sanction applications made to the Grand Court and the foreign court.

Consideration should be given by official liquidators to the incorporation of the Guidelines into the international protocol.

7. While Official liquidators of Cayman Islands incorporated companies are required to consider whether to enter into an international protocol which deals with the matters set out in CWR 0.21, r.3 they are not required to limit any protocol they enter into to such matters. The

protocol may, subject to the approval of the Court, cover other matters including court-to-court communications and cooperation as provided for in the Guidelines. In addition, even if official liquidators conclude that a protocol is not appropriate (or that it is not appropriate to incorporate the Guidelines into such a protocol) the Guidelines with suitable modifications may be adopted by an order of the Court which gives directions with respect to the procedures to be followed.

Other Cayman Islands officeholders

8. While it is only official liquidators of Cayman Islands incorporated companies subject to an official liquidation who have a duty under the CWR to consider entering into an international protocol, other Cayman Islands officeholders or companies subject to restructuring proceedings supervised by the Court may enter into a protocol incorporating the Guidelines or may apply for an order adopting the Guidelines and this Practice Direction will apply in such cases.

9. To the extent that Cayman Islands officeholders or companies subject to restructuring proceedings supervised by the Court are unclear as to the manner in which to use and apply the Guidelines in any particular case, they may apply to the Court at any early stage in the proceedings for directions.

Hon. Anthony Smellie
May 31, 2018