A Year in Review – January 2018

The Users' Committee is pleased to provide the following updates to the Commercial List Bar with respect to the activities of the Users' Committee and the Commercial Court.

Message from Justice Hainey

As you all know, Justice Frank Newbould retired from the court on June 1, 2017. He will be a great loss to the Commercial List. It is hard to imagine the Commercial List without him. We all wish him the very best in his new career as a private mediator/arbitrator.

Justice Newbould's are huge shoes to fill. I am honoured and privileged to take over his responsibilities as Team Leader. I want to thank the Commercial List Bar and my fellow Commercial List judges, especially RSJ Morawetz, for all of the assistance and support I have received in my new role.

The Commercial List is a unique court that we are all very proud of. Our goal is to provide you and your clients with a user-friendly, efficient and time-sensitive court. We are a business court and we always try to resolve matters before us in a way that makes good business sense.

Our 9:30 a.m. list continues to be readily accessible to you on very short notice, including urgent same-day attendances. We have also implemented Court Call that we highly recommend you use for scheduling, consent and other relatively non-contentious matters. We give priority to Court Call appearances on our 9:30 a.m. lists. This means that you can remain in your office and have your matter dealt with at 9:30 a.m. or shortly thereafter. This is obviously far more cost efficient than attending in person.

The judges sitting on the Commercial List for the winter term are RSJ Morawetz, Justices Conway, Dunphy, McEwen, Pattillo and me.

During the spring term the judges sitting on the Commercial List are RSJ Morawetz, Justices Dunphy, McEwen, Mesbur, Pattillo, Wilton-Siegel and me.

We look forward to working with all of you in the future.

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Report from the Judiciary

Workloads on the Commercial List are steady as of January 2018, compared to the level of activity since the last newsletter in May 2017. However, approximately 40% of the cases on the Commercial List are now Estate matters.

Scheduling of motions for summary judgment will no longer be permitted on the 9:30 list, and now must be scheduled for 10:00 a.m. Consistent with civil list practice, there will be no right to bring a motion for summary judgment on the Commercial List. Commercial List judges will vet the proposed motion to ensure it is a proper case for summary judgment. Any motions for summary judgment that are permitted to be scheduled will be case managed. Motions for partial summary judgment will not be permitted.

Judges will be encouraging use of hybrid trials to the extent matters are more expeditiously dealt with in part with viva voce evidence. The profession is reminded that disputed matters are not to be scheduled at 9:30 appointments. Further, do not book time with the Court until the matter is ready for scheduling. If a matter is to be adjourned or has settled, the Commercial List (Attention: Alsou) is to be informed as soon as possible in advance so that the booked time can be released and used for another case.

When communicating with the Commercial List office, counsel should use the general email address: **toronto.commerciallist@jus.gov.on.ca**.

Nortel Equipment

Both the Ministry of the Attorney General and Court Call have expressed an interest in taking over the Nortel equipment. The subcommittee established to explore avenues for the further use and maintenance of the Nortel equipment will continue to have discussions with parties interested in the equipment. The challenge is the cost to operate and maintain the equipment. The equipment has been used from time to time for cross-border hearings in other matters, with the parties in those matters paying all costs of start up and operation.

Court Call

Court Call has been running on the Commercial List since April 2017 with its introduction being largely successful, although its uptake by counsel has been quite slow. The Commercial List Bench would like non-substantive motions to be dealt with by video conference and is strongly urging that on consent, unopposed and scheduling matters be dealt with using Court Call where possible. The judiciary has also indicated that 9:30 matters being heard via Court Call will be dealt with first.

If a matter is proceeding by way of Court Call, any draft orders can be e-mailed to the Commercial List Office (Attention: Alsou).

The Users' Committee is considering the use of certain web-based software and how that technology might be incorporated into the Court Call process. The Users' Committee has also discussed situations where some parties are present in-person and others attend electronically via phone or otherwise. The general consensus is that the use of phones will be more practical since all parties will have access to phones but not necessarily a webcam, etc.

Renovations at 330 and 393 University

As already reported, matters previously dealt with at 393 and 361 University Avenue will be moving to 330 University Avenue. Generally, civil matters will be dealt with at 330 University Avenue with the exception of Masters' Court and family law matters which will remain at 393.

It is expected that there will be 28 courtrooms at 330 University Avenue when the renovations are completed. The transition is expected to take place over the next 18 months.

Best Practices

(i) Length of Facta

The Commercial List Bench has raised a concern about the length of facta being filed by parties and has indicated that the Commercial List Office has been instructed to enforce the 25 page limit for facta, exclusive of schedules. There is a general consensus among the Bench that 25 pages is enough for any Commercial List matter. In order to file a factum that exceeds the 25-page limit, it will be necessary to obtain advance approval from a judge at a 9:30 a.m. attendance. Approval will only be given in extraordinary circumstances.

The Commercial List Bench has also indicated that footnoting in facta is not user-friendly and should be avoided where possible.

(ii) USB Keys

In some cases, the content of USB Keys being provided to the Court will need to be encrypted and a password must be provided to the presiding Judge. The USB key should be delivered to the Court in a sealed envelope marked "to be opened only by the presiding Judge" and the password should form part of the sealed information delivered to the Court.

Report on Subcommittees

Model Orders

Anton Pillar Model Order

The Anton Pillar Model Order was translated into French and will soon be posted on the Superior Court of Justice website.

"National Model Orders"

A discussion took place at the Insolvency Institute of Canada conference in September 2017 to consider a national form of model CCAA Initial Order, and potentially others. Scott Bomhof of the Model Orders Subcommittee is participating in the IIC initiative, as well as representatives from model order subcommittees in other provinces.

At the request of Commercial List judges, the Subcommittee will be looking to create a Claims Procedure Model Order to promote consistency among such orders.

Bulk Sales Act

As a result of the repeal of the Bulk Sales Act ("BSA"), references in the model orders to the BSA will need to be removed. The subcommittee is working to remove these references and resolve any drafting issues that may arise.

Restructurings Related To Mining Claims

The Office of the Mining and Lands Commissioner ("**MCO**") should be notified of the commencement of any relevant mining restructuring proceedings as it has jurisdiction concerning any right, privilege or interest conferred by or under the authority of the *Mining Act*.[1] Previously, the MCO had understood that the Commercial List would automatically notify the MCO of any relevant Ontario mining related restructuring proceedings. However, the Commercial List Bench has confirmed that there is no such formal policy in place. An Information Bulletin which provides information that may assist the profession when dealing with restructurings involving unpatented mining claims is attached.

The Singapore Protocol

A subcommittee was established to monitor and report on the protocols for cross-border cases consisting of Pam Huff, Shayne Kukulowicz and Ken Rosenberg. Various jurisdictions, including Bermuda, the Virgin Islands, England, Wales, Delaware, Southern District of Manhattan, Singapore and parts of Australia have accepted these protocols to replace the International Insolvency Institute Guidelines.

There was a discussion about the protocol and a presentation was made by Justice Myers with comments from RSJ Morawetz. Directionally, the protocol appears to increase flexibility and move away from rigid rules in the International Insolvency Institute Protocol. Key issues include proportionality on substance and process. A general discussion included topics such as attornment, judicial consultation, enforceability and flexibility and how to deal with joint hearings in terms of both preparation, conduct of the hearing and post hearing consultation by judges. The Guidelines are un updated version of the guidelines that were used in previous cases and have been approved by CLUC. It is intended that judges will adopt the Guidelines in cross border cases by way of an order made early in the case. A copy of the Guidelines is attached.

Business Law Advisory Council (BLAC)

BLAC's current focus is replacing the *Assignment and Preferences Act*. The pace of BLAC's work has slowed and legislation is not expected in 2018.

[1] See sections 105 and 108 of the Mining Act, RSO 1990, c. M.14.

E-Document Pilot Project

The pilot project's purpose is to test technology and proof of concept with a goal of a "paper free" process and the creation of electronic courtrooms. A subcommittee of Users' Committee members will be assembled to assist with the testing and improvement of the concept. The Ministry of the Attorney General has made two requests of Users' Committee:

(a) Patience through the pilot project; and

(b) Support from the Bar by providing representatives and input to a Steering Committee.

Murray Klein Award

The Award was created to recognize Ontario insolvency and restructuring lawyers for their combined and consistently demonstrated integrity, decency and selflessness in their approach to professional practice - qualities that our friend and colleague, Murray Klein, was himself well recognized for by those who engaged with him both in and outside of professional practice.

Congratulations to Jay A. Swartz of Davies Ward Phillips & Vineberg LLP who was selected the 2017 recipient of the Murray Klein Award for Excellence in Insolvency Law. The award was presented to Jay on June 6, 2017 at the Royal Canadian Military Institute in Toronto.

Nominations for the 2018 recipient are due by 5:00 pm on March 19, 2018. Details about eligibility, selection and the nomination process can be found at **https://www.oba.org/About-US/About-Us/Awards/SectionAwards/AwardInsolvency**.

CLUC Annual Education And Golf Retreat

On May 31, 2017, the Users' Committee, in partnership with the Ontario Bar Association, Insolvency Law Section and the Ontario Association of Insolvency & Restructuring Professionals, hosted another successful Education and Golf Retreat at the Richmond Hill Golf & Country Club. The Users' Committee, in partnership with the Ontario Bar Association, Insolvency Law Section and the Ontario Association of Insolvency & Restructuring Professionals will once again be hosting the annual educational program and golf retreat on June 6, 2018 at the Richmond Hill Golf & Country Club. Registration for the event will be open in the near future. Space will be limited, so register early.

ARIL

The 15th Annual Review of Insolvency Law Conference is taking place February 8-9 in Vancouver.

Posting Of Newsletters

This is Issue #10 of the Commercial List Users' Committee Newsletter. The creation of a newsletter was felt important so that members of the Bar and other organizations who use the Commercial List are informed of the workings of the Users' Committee and given the opportunity to make recommendations for the continued improvement of the operation and administration of that Court.

Copies of this Issue and all previous issues of the Newsletter may be found on the following websites Ontario Bar Association: **http://oba.org/Sections/Insolvency-Law/Articles**, CAIRP: **http://www.oairp.com/courtmatters.htm**, and Toronto Lawyers Association: **http://www.tlaonline.ca/?page=CommercialListUsers**.

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- Brendan Bissell, Goldman Sloan Nash and Haber LLP
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Appendix "A" – Information Bulletin

COMMERCIAL LIST USERS' COMMITTEE

INFORMATION BULLETIN – January 2018

Re: Office of the Mining and Lands Commissioner – Restructurings related to holders of Ontario Unpatented Mining Claims

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The Commercial List Users' Committee together with the Office of the Mining and Lands Commissioner (**OMLC**)[1] outline below information which may assist the Profession when dealing with Restructurings involving unpatented mining claims.

Notice of the commencement of Restructuring Proceedings

The OMLC should be notified of the commencement of any relevant mining restructuring proceedings. The OMLC has jurisdiction, either when the matter is referred by the Court or under a general power, concerning any right, privilege or interest conferred by or under the authority of the Mining Act (see sections 105 and 108 of the Mining Act, R.S.O. 1990, c.M.14, as amended). Professionals involved in the proceedings should advise the OMLC of the relevant Proceedings. The current contract information is as follows:

Registrar/Mediator
Office of the Mining and Lands Commissioner
700 Bay Street, 24th Floor, Box 2400
Toronto, Ontario M5G 1Z6
Tel: 416 314-2324
Fax: 416 314-2327
Attention: Daniel E. Pascoe
E-Mail: Daniel.pascoe@ontario.ca
Website: www.ontario.ca/omlc

Upon notifying the OMLC of the initial order in the proceedings, the OMLC may also be able to assist in coordinating the Court proceedings and any requirements under the Mining Act as they relate to unpatented mining claims. This may assist Professionals involved with a number of issues, including *inter alia*:

a) Client Reports: in advance of, or as soon as possible upon commencing restructuring proceedings, the Applicants should consider seeking a Client Report from the Provincial Recording Office (PRO). This will provide information on the current status of unpatented mining claims and inform the reader of the potential for lapsed and/or expiring claims which may require immediate action.

b) Extensions: in anticipation of the commencement of the restructuring proceedings, Professionals should consider whether any pending unpatented mining claims will be expiring shortly. In that case, the Applicant may seek an order from the PRO extending the time to perform and file necessary assessment work pursuant to subsection 73(1) of the Mining Act and O**.** Reg. 274/17, as amended, section 5.

c) Recognizing Pending Proceedings: once the Restructuring proceedings are commenced, Professionals should notify the OMLC. The Applicant may request an order for the placement of the Pending Proceedings notation on the abstracts of the subject mining claims pursuant to section 64

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[1] In the Spring 2017 budget, the Mining and Lands Commissioner was changed to the Mining and Lands Tribunal, with an Associate Chair to be appointed. Current per diem Deputy Commissioners are anticipated to be appointed as members. The OMLT will be part of ELTO (Environment and Land Tribunal Cluster). This has received Royal Assent and proclamation is anticipated for April 1, 2018. The contact information herein for Dan Pascoe will remain relevant.

(2.2) of the Mining Act, which holds the requirement to perform mandated annual units of assessment work in abeyance for existing unpatented mining claims, such that they will not lapse during the course of the restructuring proceedings, thereby preserving the claims. The OMLC may fix a new anniversary date in respect of the unpatented mining claims. The effect of this recognition would be, for example, if 1 month of time was remaining in the life of an unpatented claim that remaining time would continue and be held in abeyance during the course of the restructuring proceeding.

The OMLC suggests that it would be beneficial to specifically list the relevant unpatented mining claims in the Initial Court Order commencing the restructuring proceedings, if possible, in order to coordinate and facilitate the recognition order.

d) Withdrawal Order: if the Client Report outlines unpatented mining claims that lapsed prior to the commencement of the restructuring proceedings, the Applicant may seek relief by way of a withdrawal order, which has the effect of removing the claims from the lands open for acquisition pursuant to subsection 35(1) of the Mining Act. This request is made from the OMLC to the Ministry of Northern Development and Mines to the Minister's delegate to remove lands that have forfeit and have not been re-staked / map staked so that they may be withdrawn from staking. In any future vesting orders being sought in the proceedings, Professionals involved should ensure that this relief is captured in the vesting order.

e) Form of Vesting Orders / transfer documentation: Should a vesting order be required during the course of the restructuring proceedings, the OMLC can assist in reviewing the form of the Order and determining whether any additional terms are required or would be beneficial. The OMLC can also assist the Applicant / Purchaser in determining whether all necessary conditions in respect of the transfer of the claims have been satisfied. The OMLC is available to assist the parties and should be contacted as far in advance of the proposed transaction as possible.

When dealing with the transfer of unpatented mining claims, it may be beneficial when documenting such a transfer, in addition to referring to the Vesting Order itself and any purchase agreement, that Professionals involved use the PRO assignment/transfer document, which could assist the PRO for registration purposes. A copy of the transfer form is attached and can be found at in the Central Forms Repository for the Government of Ontario (http://www.forms.ssb.gov.on.ca/, Form Number 019-0239E).

f) Extensions: in anticipation of the vesting of the unpatented mining claims in a Purchaser, the Purchaser may consider whether any pending unpatented mining claims, which had received the benefit of the tolling period above, will be expiring shortly following the effective date of the vesting order. In that case, the Applicant/Purchaser may seek an order from the PRO extending the timelines or conditions pursuant to subsection 73(1) of the Mining Act, and Regulation 274/17, section 5.

g) Registration of Vesting Orders will be completed with the PRO.

h) Coordinating with Vesting Order: At the time the Vesting Order is being sought, the Applicant may seek a variety of orders under the Mining Act, including orders: from the OMLC cancelling the notation of pending proceedings (subsection 64(4.1)); excluding the time during which proceedings were pending before the Court involving the claims from the time within which work must be performed or filed or within which application and payment for lease may be made (section 64(5)); and removing the withdrawal order from the lands (section 35.1).

i) The PRO and the OMLC will be in a position to assist the Applicant/Purchaser in coordinating the relief being sought.

Patented Mining Claims / Mineral Leases

The OMLC does not deal directly with patented mining claims/ mineral leases which are registered on the Land Titles system. Professionals involved with such claims will need to deal directly with the Ministry of Northern Development and Mines (and local land registry offices) regarding such claims.

Appendix "B" – Issuance of Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 1 OF 2017

ISSUANCE OF GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

In October 2016, the Supreme Court announced the establishment of a network of insolvency judges from several jurisdictions to encourage communication and cooperation amongst national courts. The network, known as the Judicial Insolvency Network ("**JIN**"), comprises judges from Australia (Federal Court and New South Wales), Bermuda, the British Virgin Islands, Canada (Ontario), the Cayman Islands, England & Wales, Singapore and the United States of America (Delaware and Southern District of New York) as pioneer participants. The JIN has approved guidelines (enclosed in **Schedule I** herein) setting out key features to be reflected in a protocol or order of court for communication and cooperation among courts, and insolvency representatives and other parties in cross-border insolvency proceedings (the "**Guidelines**").

2 In Singapore, the Guidelines supplement all legislation, rules and procedure concerning insolvency. They shall be considered in any case involving cross-border proceedings relating to insolvency or adjustment of debt commenced in more than one jurisdiction. To give effect to the Guidelines (whether in whole or in part and with or without modification), a protocol or an order of court shall be made in an appropriate case following an application by the parties or of the Court's own motion.

Dated this 1st day of February 2017.

VINCENT HOONG
REGISTRAR
SUPREME COURT

Schedule I

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;

(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;

(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;

(iv) the management of 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 the number of jurisdictions involved in Parallel Proceedings;

(v) the sharing of information in order to reduce costs; and

(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[1] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit[2].

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

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[1] The term "parties" when used in these Guidelines shall be interpreted broadly.

[2] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order[3], following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It 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.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

[3] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of 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 any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) 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.

(ii) Directing counsel or other appropriate person to transmit or deliver copies of documents, pleadings, affidavits, 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.

(iii) Participating in two-way communications with the other court, by telephone or video conference call or other electronic means, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, other than on administrative matters, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications.

(iii) The communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the

communications, may be treated as the official transcript of the communications.

(iv) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(v) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other 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.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and

properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and 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. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol, order or directions made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures 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.

(vii) A 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 outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.