

MODALITIES OF COURT-TO-COURT COMMUNICATION

Scope and definitions

1. These Modalities apply to direct communications (written or oral) between courts in specific cases of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction (“Parallel Proceedings”). Nothing in this document precludes indirect means of communication between courts, such as through the parties or by exchange of transcripts, etc. This document is subject to any applicable law.
2. These Modalities govern only the mechanics of communication between courts in Parallel Proceedings. For the principles of communication (*e.g.*, that court-to-court communications should not interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings, etc.), reference may be made to the *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (the “Guidelines”) issued by the Judicial Insolvency Network in October 2016 and attached as **APPENDIX A**.
3. These Modalities contemplate contact being initiated by an “Initiating Judge” (defined below). The parties before such judge may request him or her to initiate such contact, or the Initiating Judge may seek it on his or her own initiative.
4. In this document:
 - a. “Initiating Judge” refers to the judge initiating communication in the first instance;
 - b. “Receiving Judge” refers to the judge receiving communication in the first instance;
 - c. “Facilitator” refers to the person(s) designated by the court where the Initiating Judge sits or the court where the Receiving Judge sits (as the case may be) to initiate or receive communications on behalf of the Initiating Judge or the Receiving Judge in relation to Parallel Proceedings.

Designation of Facilitator

5. Each court may designate one or more judges or administrative officials as the Facilitator. It is recommended that, where the Facilitator is not a judge, a judge be designated to supervise the initial steps in the communication process.
6. Courts should prominently publish the identities and contact details of their Facilitators, such as on their websites.
7. Courts should prominently list the language(s) in which initial communications may be made and the technology available to facilitate communication between or among courts (*e.g.* telephonic and/or video conference capabilities, any secure channel email capacity, etc.).

Initiating communication

8. To initiate communication in the first instance, the Initiating Judge may require the parties over whom he or she exercises jurisdiction to obtain the identity and contact details of the Facilitator of the other court in the Parallel Proceedings, unless the information is already known to the Initiating Judge.
9. The first contact with the Receiving Judge should be in writing, including by email, from the Facilitator of the Initiating Judge's court to the Facilitator of the Receiving Judge's court, and contain the following:
 - a. the name and contact details of the Facilitator of the Initiating Judge's court;
 - b. the name and title of the Initiating Judge as well as contact details of the Initiating Judge in the event that the Receiving Judge wishes to contact the Initiating Judge directly and such contact is acceptable to the Initiating Judge;

- c. the reference number and title of the case filed before the Initiating Judge and the reference number and title (if known; otherwise, some other identifier) of the case filed before the Receiving Judge in the Parallel Proceedings;
- d. the nature of the case (with due regard to confidentiality concerns);
- e. whether the parties before the Initiating Judge have consented to the communication taking place (if there is any order of court, direction or protocol for court-to-court communication for the case approved by the Initiating Judge, this information should also be provided);
- f. if appropriate, the proposed date and time for the communication requested (with due regard to time differences); and
- g. the specific issue(s) on which communication is sought by the Initiating Judge.

Arrangements for communication

10. The Facilitator of the Initiating Judge's court and the Facilitator of the Receiving Judge's court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation of counsel or the parties unless otherwise ordered by one of the courts.
11. The time, method and language of communication should be to the satisfaction of the Initiating Judge and the Receiving Judge, with due regard given to the need for efficient management of the Parallel Proceedings.
12. Where translation or interpretation services are required, appropriate arrangements shall be made, as agreed by the courts. Where written communication is provided through translation, the communication in its original form should also be provided.
13. Where it is necessary for confidential information to be communicated, a secure means of communication should be employed where possible.

Communication between the Initiating Judge and the Receiving Judge

14. After the arrangements for communication have been made, discussion of the specific issue(s) on which communication was sought by the Initiating Judge and subsequent communications in relation thereto should, as far as possible, be carried out between the Initiating Judge and the Receiving Judge in accordance with any protocol or order for communication and cooperation in the Parallel Proceedings¹.
15. If the Receiving Judge wishes to by-pass the use of a Facilitator, and the Initiating Judge has indicated that he or she is amenable, the judges may communicate with each other about the arrangements for the communication without the necessity for the participation of counsel or the parties.
16. Nothing in this document should limit the discretion of the Initiating Judge to contact the Receiving Judge directly in exceptional circumstances.

¹ See Guideline 2 of the *Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters*.