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A Non-Profit Corporation Dedicated to the Improvement of International Insolvency Systems and Procedures

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Dear Mr. Haluca:

## Re: Statutory Review of the BIA and the CCAA

I am writing on behalf of the International Insolvency Institute (the "III") with regard to the Statutory Review of the BIA and the CCAA that is currently under way. By way of background, the III is a non-profit Canadian-chartered corporation headquartered in Toronto whose goals and objectives are to improve international insolvency systems and procedures for the benefit of everyone involved in them or affected by them. The III has an invitational Membership of 325 Members from the legal, accounting, academic and judicial communities and is represented in over 60 countries around the world.

The III has considered many of the issues that appear in the Department's Discussion Paper. The III has done work on the insolvency of corporate groups, coordination and communication among jurisdictions in cross-border cases, priority claims in bankruptcies and restructurings, obligations

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of directors and officers in insolvency and pre-insolvency situations, intellectual property rights and obligations in insolvency cases, use of arbitration procedures in disputes arising out of insolvency cases and measures to fairly and effectively deal with insolvencies involving multi-national corporate groups. In addition, many of our Members have written and published on these topics and many of our materials are on our (under development) website which is *www.iiiglobal.org*.

Our experience has shown that very significant advantages result when administrations in different countries are coordinated with each other. One of our accomplishments has been to facilitate that kind of cooperation and communication through, among other things, the involvement of the worldwide Membership of our Judicial Committee (40 judges from 18 countries around the world). Our most significant product in this area has been the development and promulgation of the III/ALI *Guidelines for Court-to-Court Communications in Cross-Border Cases* which were approved in a joint project with the American Law Institute by the Membership of the III and by the Membership of the ALI. The *Guidelines* has been endorsed and approved by 16 professional, judicial and industry groups and associations and have been applied in over 30 cross-border cases. With the delivered copy of this letter, I am enclosing several copies of a pamphlet that contains the text of the *Guidelines* from which you can see there has been a very significant acceptance of the *Guidelines* by Canadian Courts in cross-border cases.

The pamphlet also contains the III/ALI *Principles of Cooperation in International Insolvency Cases*. These were developed in a multi-year collaboration between the III and the ALI and were submitted to the ALI last year and submitted to the membership of the III at its Annual Meeting in 2012 in Paris, France.

The *Guidelines* are taken from a much larger study which, at 276 pages, is too voluminous to reproduce here but it is available on the ALI website and on the III website under the title given above. I think there would be considerable merit in this revision of Canadian insolvency legislation to provide more specifically for the authority of Courts to communicate with each other and with Insolvency Administrators in other countries where doing so would assist in coordinating and cooperating with administrations in different countries. This would certainly be consistent with the existing international insolvency provisions of the BIA and CCAA.

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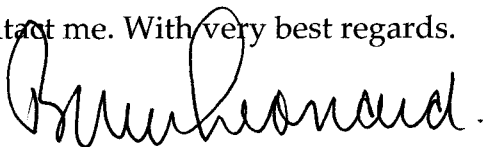
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Another product that would be of interest in the context of insolvencies of multi-national corporate groups would be the *Guidelines for Coordination of Multinational Enterprise Group Insolvencies* (the "Group Guidelines") which were developed over several years by a Committee of the III. These *Guidelines* were formally submitted to and approved by the Membership of the III at its 2012 meeting in Paris, France and were revised slightly for presentation at the III's 2013 Conference at Columbia University in New York. With the delivered copy of this letter, I am enclosing several copies of the *Guidelines* for your use and information. Our Committee is continuing to study the area and may have additional recommendations in due course but the work reflected in the *Group Guidelines* is certainly the basis for considering statutory provisions that could facilitate and enhance coordination in cases involving different units of multi-national corporate groups.

With the delivered copy of this letter, I am also enclosing copies of a publication entitled *Getting the Deal Through: Insolvency and Restructuring, 2014*. This book analyzes major insolvency issues from the perspective of some 50 countries worldwide by way of the contributions of leading insolvency practitioners in those countries. I am privileged to serve as the Contributing Editor to this work. Practitioners have found the work to be extremely valuable in determining the ways in which major insolvency issues are dealt with in the countries involved. The advantage to the book is that each Country Respondent answers the same questions from the perspective of their country. The publishers maintain a website for the book and, through the website, an interested reader can select a particular issue or question and thereafter print the answers to that question (i.e. the domestic treatment of the issue) from any or all of the 50 or so responding countries. It is a very valuable resource for comparative legislative analysis of important insolvency topics.

I hope that this information will be of assistance in the Strategic Review of the BIA and CCAA and I hope to add some additional comments separately on some of the issues raised by the Strategic Review for your consideration. If I can be of any assistance with any of the material enclosed with this letter or otherwise, please do not hesitate to contact me. With very best regards.



Bruce Leonard