Eligibility Under § 109(a) in Ch. 15: The Case for Favoring the Eleventh Circuit Approach

By Leyza B. Florin and Alejandro Rodriguez Vanzetti

The intersection of domestic statutory requirements and international insolvency framework has triggered a sharp division among federal courts regarding who qualifies for relief under chapter 15. Particularly, §109(a) of the Bankruptcy Code provides that "only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title."[1] Few threshold questions in cross-border insolvency have proved as divisive as whether § 109(a) governs a foreign representative's petition for recognition under chapter 15. The Eleventh Circuit says *no*, giving effect to the statute's purpose while invoking principles of international comity and in reliance of prior jurisprudence under 11 U.S.C. § 304.[2] Conversely, the Second Circuit, and more recently the Southern District of Texas Bankruptcy Court, say *yes*, relying on a plain reading of the Bankruptcy Code.[3]

While the plain-reading approach has real force, its outcome is at odds with chapter 15's stated purpose: to provide an effective mechanism for dealing with cases of cross-border insolvency.[4] On this question, the Eleventh Circuit gets it right.

Chapter 15's Comity-Based Framework

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Enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), chapter 15 replaced former § 304 and incorporated the UNCITRAL Model Law on Cross-Border Insolvency,[5] acting as the primary vehicle for recognizing foreign insolvency proceedings in the U.S.[6] For the cross-border practitioner, chapter 15's appeal lies in what recognition unlocks.

To illustrate, securing recognition as a "foreign main proceeding" triggers the automatic stay and opens the door for foreign representatives to seek discovery and other relief as to the debtor's U.S. assets.[7] Recognition, in other words, "is what determines whether the parties to a foreign proceeding will have access to the judicial resources and power of the United States[,]" making eligibility under the statute a crucial question.[8]

With regard to § 109(a) eligibility, two schools of thought have emerged: The Eleventh Circuit, in *In re Goerg* and later in *In re Al Zawawi*, relies in part on the purpose of chapter 15 and its predecessor § 304 in holding that § 109(a) does not apply to chapter 15, because recognition merely gives effect — as a matter of comity — to a proceeding instituted under foreign law to a "debtor" already subject to that foreign proceeding's eligibility requirements.[9] The Second Circuit, in *In re Barnet*, reaches the opposite conclusion on a plain-text reading: Section 103(a) makes all of chapter 1, including § 109(a), applicable to chapter 15, so the foreign debtor must have a U.S. domicile, place of business or property before a court may grant recognition.[10]

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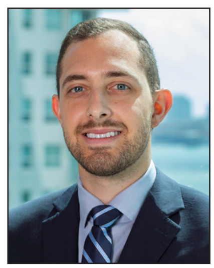
The Eleventh Circuit's *Al Zawawi*



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The Eleventh Circuit returned to the issue 36 years after *Goerg* in *Al Zawawi*. Talal Qais Abdulmunem Al Zawawi, a citizen of Oman, owned shares in a Curaçao entity that in turn owned several Florida companies holding roughly $94 million in Florida real estate.[11] After he moved to the U.K., his wife petitioned for a divorce and, in March of 2019, obtained a £24,075,000 judgment.[12]

To enforce this award, a U.K. court subsequently entered a worldwide freezing order barring him from disposing of his assets until the judgment was satisfied.[13] After he failed to pay the judgment, his former spouse obtained an involuntary bankruptcy adjudication against him in the English bankruptcy court, which appointed trustees (one of whom serves as foreign representative) who filed a chapter 15 petition for recognition in the U.S. Bankruptcy Court for the Middle District of Florida.[14]

Al Zawawi did not dispute that the requirements of § 1517 were met. Instead, he argued that his English bankruptcy proceeding was ineligible to be recognized under chapter 15 because he did not reside or have a domicile, place of business or property in the U.S. as required under § 109(a).

Rejecting this argument, the Florida bankruptcy court granted recognition, holding that § 109(a) does not apply to chapter 15 and, alternatively, that Al Zawawi had U.S. property interests.[15] The district court affirmed solely on the ground

1 11 U.S.C. § 109(a).
2 *In re Goerg*, 844 F.2d 1562, 1568 (11th Cir. 1988); *In re Al Zawawi*, 97 F.4th 1244, 1255 (11th Cir. 2024).
3 *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013); *In re Siu-Fung Ceramics Holdings Ltd.*, No. 24-33299, 2026 Bankr. LEXIS 355, at *45 (Bankr. S.D. Tex. Feb. 10, 2026).
4 11 U.S.C. § 1501(a).
5 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §801 (2005); *Al Zawawi*, 97 F.4th at 1252 (identifying former § 304 as chapter 15's predecessor); 11 U.S.C. § 1501(a).
6 *Al Zawawi*, 97 F.4th at 1264 (Tjoflat, J., specially concurring) (quoting *Tacon v. Petroquest Res. Inc. (In re Condor Ins. Ltd.)*, 601 F.3d 319, 322 (5th Cir. 2010)).
7 11 U.S.C. § 1520(a)(1); *Al Zawawi*, 97 F.4th at 1248.
8 *Al Zawawi*, 97 F.4th at 1251.
9 *Id.* at 1255; *In re Goerg*, 844 F.2d at 1567–68.
10 *Barnet*, 737 F.3d at 247.
11 *Al Zawawi*, 97 F.4th at 1247–48.
12 *Id.* at 1248.
13 *Id.*
14 *Id.*
15 *Id.* at 1249–50.

that § 109(a) does not apply.[16] Al Zawawi appealed to the Eleventh Circuit. While agreeing with *Barnet*'s plain-reading analysis, the panel found that it was bound by circuit precedent in *Goerg*, which held that eligibility under the Code was not a prerequisite to ancillary assistance under chapter 15's predecessor, former § 304.[17]

The *Al Zawawi* court highlighted an anomaly at the heart of *Goerg*: § 101's definition of "foreign proceeding" referenced a "debtor," yet the foreign proceeding, by its own definition, need not even be a bankruptcy proceeding.[18] The *Goerg* court had identified two possible solutions: Either adopt a narrow reading of the Bankruptcy Code's definition of "debtor" — as *Barnet* would do 25 years later — or treat the reference to "debtor" in the statute as incorporating the definition of the word as used in the forum in which the foreign proceeding is pending.[19]

Faced with these choices, in opting for the latter approach, and recognizing that the statute is subject to more than one interpretation, the *Goerg* court looked to the "purpose" of § 304, which is generally "to help further the efficiency of foreign insolvency proceedings involving worldwide assets."[20] And because the purpose of chapter 15 tracks that of former § 304 by, among other things, providing "effective mechanisms for dealing with cases of cross-border insolvency[,]" the *Al Zawawi* panel followed the logic of *Goerg* and held that debtor eligibility under chapter 1 is not a prerequisite for recognition under chapter 15.[21] With § 109(a) out of the picture, the § 1517 requirements were met, and *Al Zawawi* was properly subject to be recognized as a foreign proceeding.[22]

Texas's *Siu-Fung Ceramics Holdings Ltd.* Agrees with the Second Circuit

The Siu-Fung Group was an enterprise whose ceramic sanitary-ware ventures operated across Hong Kong and the People's Republic of China.[23] In 2000, the Hong Kong High Court placed the group entities into winding-up liquidation.[24] Siu-Fung Seigfried Lee, the group's chairman, personally guaranteed group financing but ultimately defaulted and was adjudged bankrupt in Hong Kong in 2001 (the Lee 2001 bankruptcy).[25]

Following these insolvencies, the liquidators and trustee spent years investigating alleged fraudulent transfers of the group's principal asset through a web of family members and offshore entities.[26] In 2016, Lee left Hong Kong for California on a temporary work visa and later funded real estate projects in Houston.[27] The foreign representatives alleged he had moved proceeds of the disputed assets to U.S.-based entities.[28]

To trace and recover these assets, they filed a chapter 15 petition seeking recognition of the group liquidation and the Lee 2001 bankruptcy as foreign main proceedings.[29] Nine months later, a representative wired a $1,200 retainer to U.S. counsel that was later deposited into a Houston trust account.[30] The foreign representatives then filed an amended petition, arguing that the retainer satisfied § 109(a).[31]

The bankruptcy court denied recognition of both proceedings.[32] As to the group liquidation, the court found the § 1517 requirements otherwise satisfied and Hong Kong to be the group's center of main interest, making the liquidation a foreign main proceeding — but held § 109(a) unsatisfied because the group debtors had no property in the U.S. as of the petition date.[33]

Observing that the Fifth Circuit had described the § 1517 recognition standard without ever confronting whether § 109(a) is a precondition, the court found answering the question "inescapable."[34] It applied a plain-meaning analysis, expressly adopting *Barnet*'s reasoning. It found that § 103(a) makes all of chapter 1 applicable to chapter 15, noting that § 109(a) sits within chapter 1, thus creating a requirement for any debtor.[35] The court rejected the foreign representatives' argument that nothing in §§ 1515 and 1517(a) requires that § 109(a) be satisfied for the court to grant recognition, reasoning that this argument "fails to comport with a straightforward reading of the text."[36] Focusing on "interrelated terms" under chapters 1 and 15, the court reasoned that both "foreign proceeding" and "foreign representative" are defined in chapter 1, and both terms reference — and thus rely on — the term "debtor," which is also defined in chapter 1.[37]

The court further held that chapter 15's own definition of "debtor" in § 1502(1) is reconcilable with § 109(a): Following *Barnet* and a concurrence by Judge Lagoa in *Al Zawawi*, § 1502(1) supplants the § 101(13) definition for chapter 15 purposes but does not displace § 109(a)'s separate requirement to qualify as a debtor under title 11.[38] The court distinguished the Eleventh Circuit's contrary holding, noting without extensive analysis that *Al Zawawi* rested on that circuit's prior-precedent rule rather than disagreement with *Barnet*'s plain-meaning analysis.[39]

Having held § 109(a) applicable, the court found that the debtors failed to meet this standard on two independent grounds. First, the court rejected the $1,200 retainer could not qualify because debtor eligibility is measured as of the petition date and the retainer was deposited roughly nine months after the initial filing.[40] Second, the court ruled that the representatives' unfiled "potential claims" for fraudulent transfer did not qualify as "property."[41] Although causes of action constitute

16 *Id.* at 1250.
17 *Id.* at 1255 (discussing *In re Goerg*, 844 F.2d 1568).
18 *Al Zawawi*, 97 F.4th at 1252–53.
19 *Id.* at 1253 (quoting *In re Goerg*, 844 F.2d 1567).
20 *Goerg*, 844 F.2d at 1568.
21 *Al Zawawi*, 97 F.4th at 1255.
22 *Id.*
23 *Siu-Fung*, 2026 Bankr. LEXIS 355, at *1–3.
24 *Id.* at *3–4.
25 *Id.* at *4–5.
26 *Id.* at *6–15.
27 *Id.* at *15.
28 *Id.* at *15–16.
29 *Id.* at *20–22.
30 *Id.* at *21–22.
31 *Id.* at *54.
32 *Id.* at *86.
33 *Id.* at *45–47. With regard to the Lee 2001 bankruptcy, the parties did not dispute that § 109(a) was satisfied. *Id.* at 64.
34 *Id.* at *32.
35 *Id.* at *32–34 (citing *Barnet*, 737 F.3d at 247).
36 *Id.* at *34–35.
37 *Id.*
38 *Id.* at *37–40 (citing *Al Zawawi*, 97 F.4th 1244, 1256–60 (11th Cir. 2024) (Lagoa, J., specially concurring)).
39 *Id.* at *38 (citing *Al Zawawi*, 97 F.4th at 1257).
40 *Id.* at *53–57.
41 *Id.* at *57–63.

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intangible "property," and some courts have recognized claims as sufficient to establish eligibility, the *Siu-Fung Ceramics* court distinguished those cases as inapplicable to the facts at hand.[42]

Why the *Goerg* and *Al Zawawi* Approaches Work

Judge Tjoflat authored both the majority opinion in *Goerg* and a special concurrence in *Al Zawawi*. The majority in both agreed that a "foreign proceeding" requires *only* that the debtor in a case ancillary to a foreign proceeding "be properly subject, under applicable foreign law," to a "foreign proceeding" as defined in the Bankruptcy Code — a reading rooted in comity principles.[43]

The court in *Siu-Fung Ceramics* took the opposite path. Although it acknowledged that it must consider whether § 109(a) is consistent with chapter 15's purpose, it leaned on *Barnet*'s conclusion that the statute's express objectives are not dispositive of the issue because "they could all be accomplished with or without imposition of section 109(a)" by, for example, requiring that a retainer be paid to counsel on behalf of the debtor and held in a U.S. bank account.[44] But this approach provides a workaround to the problem of § 109(a) applicability rather than giving weight to chapter 15's stated purpose: "to provide effective mechanisms for dealing with cases of cross-border insolvency."[45]

Section 1508, titled "Interpretation," should also serve as a guidepost: "In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions."[46] Indeed, Congress has incorporated certain elements of *The Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency* (issued alongside the Model Law) into the text of § 101(23), and the *Enactment Guide* defines terms broadly to avoid varying technical meanings in different legal systems.[47] Why, then, apply a domestic eligibility filter absent from the Model Law?

At bottom, chapter 15 does not create a new bankruptcy estate; it merely recognizes a foreign proceeding, and a debtor does not become a debtor under the Bankruptcy Code but simply remains the subject of the foreign proceeding.[48] As the leading treatise explains and Judge Tjoflat emphasized, "In a chapter 15 case, the debtor in the foreign proceeding is not a debtor under Title 11."[49] Chapter 15 supplies its own definition precisely because that entity never becomes a debtor under Title 11.[50]

Judge Tjoflat's concurrence also highlights that requiring § 109(a) eligibility would reward fraudulent transfers, since a debtor who disposed of all U.S. assets pre-petition could defeat recognition.[51] "Common sense," he says, "tells us this result almost certainly cannot be correct."[52]

The division surrounding § 109(a)'s application to chapter 15 has produced acute uncertainty in an area of law where predictability matters most. Ultimately, resolving this rift may require intervention by Congress or by the U.S. Supreme Court. Unless and until that happens, the Eleventh Circuit's approach remains the decidedly better-reasoned one. abi

42 *Id.* at *57–63 (citing *In re Equinox Oil Co.*, 300 F.3d 614, 618 (5th Cir. 2002); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361 (Bankr. S.D.N.Y. 2014); *In re Zawawi*, 634 B.R. 11 (Bankr. M.D. Fla. 2021)).
43 *Goerg*, 844 F.2d at 1568; *Al Zawawi*, 97 F.4th at 1255.
44 *Siu-Fung*, 2026 Bank. LEXIS 355 at *42–43 (quoting *In re Barnet*, 737 F.3d at 251).
45 11 U.S.C § 1501(a).
46 11 U.S.C. § 1508.
47 *Al Zawawi*, 97 F.4th at 1265 (Tjoflat, J., specially concurring); *Enactment Guide* ¶ 65.
48 *Al Zawawi*, 97 F.4th at 1268 (Tjoflat, J., specially concurring).
49 *Id.* (quoting 8 *Collier on Bankruptcy* ¶ 1517.01 (16th ed. 2023)).
50 *Id.* at 1260 (Tjoflat, J., specially concurring) (quoting 8 *Collier on Bankruptcy* ¶ 1517.01 (16th ed. 2023)).
51 *Al Zawawi*, 97 F.4th at 1274, 1274–77 (Tjoflat, J., specially concurring). In *Al Zawawi*, the foreign representatives claimed that, less than a month before the involuntary petition, Al Zawawi sold his interest in a U.S.-connected entity, Texas Q Zone Inc., to his brother — a transfer the representatives contend was in violation of the U.K. freezing order. *Id.* at 1274–76 (Tjoflat, J., specially concurring).
52 *Id.* at 1277.