From *Modern Land* to Modern Day: Section 305 Abstention and Its Boundaries in Cross-Border Restructurings

By Michael B. Schaedle, Evan J. Zucker and Jennifer K. Malow

Michael Schaedle is a partner with Blank Rome LLP's Finance, Restructuring and Bankruptcy Group in Philadelphia. Evan Zucker is Of Counsel in the firm's New York office and a 2019 ABI "40 Under 40" honoree. Jennifer Malow is an associate in the firm's Wilmington, Del., office.

When should a U.S. bankruptcy court defer to a foreign insolvency proceeding? The question remains complex, even against the relatively settled comity framework established by chapter 15 of the Bankruptcy Code.

In *In re Modern Land (China) Co., Ltd.*,[1] Chief Judge **Martin Glenn** recognized a Cayman scheme of arrangement as a foreign main proceeding under chapter 15, where the debtor, with no financial or operational connection to the Cayman Islands, had obtained overwhelming creditor support for its reorganization.

Michael B. Schaedle
Blank Rome LLP
Philadelphia

In *In re Xinyuan Real Estate Company Ltd.*,[2] Judge **Philip Bentley** revisited Judge Glenn's emphasis in *Modern Land* on creditor preference, but in a different procedural posture: whether a court should abstain under § 305 of the Bankruptcy Code from an involuntary chapter 11 petition in favor of a later-filed Cayman scheme of arrangement. Unlike *Modern Land*, the debtor was "very far from obtaining overwhelming creditor support or from coming to terms with the petitioning creditors."[3] and in a different procedural context: abstention.

Finally, in *In re Oi S.A.*,[4] Judge **Lisa G. Beckerman** focused on the Bankruptcy Code's abstention and chapter 15 provisions, related title 28 provisions, and congressional purposes, concluding that § 305 does not authorize dismissal of chapter 15 cases, even where the debtor seeks that result to pursue a broader restructuring strategy. Taken together, these decisions show that creditor support can justify deference to a foreign restructuring, but § 305 has limits where creditor consensus is lacking or where dismissal would undermine chapter 15's statutory framework.

Weighing Creditor Expectations in *Modern Land* and *Xinyuan*

In *Modern Land*, the debtor, a PRC-based company incorporated in the Cayman Islands but with minimal business ties there, elected to restructure in the Cayman Islands. Judge Glenn nevertheless found that the Cayman Islands was the debtor's center of main interests, or "COMI." The debtor had carried out its restructuring under centralized Cayman supervision, and creditors had approved the Cayman scheme. No party objected to recognition of the creditor-supported Cayman case as a foreign main proceeding or to U.S. enforcement of the scheme in chapter 15. Judge Glenn found that creditors could reasonably expect a Cayman-based reorganization based on offering memoranda identifying the Cayman Islands as a restructuring option. He observed that "because their money is ultimately at stake, one generally should defer ... to the creditors' acquiescence in or support of a proposed COMI."[5]

Evan J. Zucker
Blank Rome LLP
New York

The bankruptcy court in *Xinyuan* recognized that *Modern Land* provides "strong precedential support for recognition of the Cayman Restructuring as a foreign main proceeding" *if* two conditions were met: (1) overwhelming scheme-creditor support; and (2) no objection to recognition. But Judge Bentley was not deciding recognition, as no chapter 15 case had been filed; he was deciding whether a first-filed U.S. involuntary chapter 11 case should be dismissed under § 305 in favor of a later-filed Cayman restructuring.

Section 305(a)(1) permits a bankruptcy court to dismiss or suspend a case if creditors and the debtor would be better served outside bankruptcy. Abstention has been considered a check on involuntary bankruptcy, enabling courts to dispose of cases that do not provide a proper collective remedy.[6] Abstention is not appealable under Bankruptcy Code § 305(c) to senior appellate courts.

Granting § 305(a)(1) relief is an "extraordinary remedy" that considers the following factors: (1) the efficiency of administration; (2) *whether another forum can protect stakeholder interests;* (3) whether bankruptcy is necessary to reach an equitable solution; (4) whether there is another way to equitably distribute assets; (5) *whether there is an out-of-court arrangement that better serves all interests in the case;* (6) whether a non-federal insolvency has proceeded so far that bankruptcy would be costly and time-consuming;

1 *In re Mod. Land (China) Co. Ltd.*, 641 B.R. 768 (Bankr. S.D.N.Y. 2022).

2 *In re Xinyuan Real Est. Co. Ltd.*, No. 25-10745 (PB), 2026 WL 592250, (Bankr. S.D.N.Y. Mar. 3, 2026).

3 *Id.* at *1.

4 *In re Oi S.A.*, 674 B.R. 175 (Bankr. S.D.N.Y. 2025).

5 *Mod. Land*, 641 B.R. at 782.

6 G.M. Treister, *et al.*, *Fundamentals of Bankruptcy Law*, section 3.02(c)(2) at 131-32 (4th ed. 1996).

and (7) the purpose for which bankruptcy has been sought.[7] When there is a pending foreign proceeding, comity also enters the analysis.

Abstention Denied When a Foreign Proceeding Lacks Creditor Momentum

Stating that "abstention by a bankruptcy court in favor of a competing foreign insolvency proceeding is often warranted to avoid the disruption and expense that dueling proceedings can cause," the bankruptcy court in *Xinyuan* denied the debtor's motion to dismiss. Xinyuan, a Cayman holding company for a Chinese property development group, was overleveraged and facing mounting enterprise pressure.[8]

Jennifer K. Malow
Blank Rome LLP
Wilmington, Del.

In April 2025, three investment funds holding $65 million of certain senior notes filed an involuntary chapter 11 petition against Xinyuan. The following month, the debtor announced a support agreement with creditors holding 25 percent of the outstanding principal of certain notes and filed in the Cayman Islands to restructure approximately $600 million of U.S.-dollar-denominated debt. The debtor moved to dismiss the first-filed U.S. involuntary petition on three grounds: abstention under § 305(a)(1), cause under § 1112(b) and *forum non conveniens*. In denying abstention, the bankruptcy court found that the debtor failed to show that § 305-based dismissal would benefit creditors generally and identified "three high hurdles" the debtor could not clear.

First, the debtor had only *31 percent* creditor support for its Cayman scheme, short of the *75 percent* threshold required under Cayman law for scheme approval. The bankruptcy court noted that the debtor had provided "no details, let alone any evidence" to support its expectation of obtaining additional support, leading the bankruptcy court to conclude that "the Debtor's restructuring appears to have reached an impasse."[9] That posture stood in sharp contrast to *Modern Land*, where the debtor had support from holders of 81 percent of outstanding notes, the scheme had passed with approximately 95% percent in value voting in favor, and the Cayman court had already sanctioned the scheme without objection.

Second, the Cayman court would need to approve the debtor's decision to place all scheme creditors, holding notes with interest rates ranging from 3 to 14.5 percent, into a single class, a classification the bankruptcy court found analytically suspect. In *Modern Land*, by contrast, the single-class treatment was never contested, because overwhelming creditor approval mooted any classification challenge.

Third, the debtor had to obtain chapter 15 recognition of its Cayman restructuring as a foreign main proceeding in a subsequent filing given that a noteholder had commenced an involuntary case against the debtor in the U.S. relating to U.S.-dollar-denominated funded debt. The bankruptcy court found that such a case would likely fail because Xinyuan's COMI was in China, not the Cayman Islands. Xinyuan had "only minimal Cayman connections," and without creditor support for its Cayman scheme, the statutory presumption favoring Cayman domicile would be overcome by dissenting creditors' apparent preference for a U.S.-based reorganization.[10]

The bankruptcy court in *Xinyuan* found that allowing the involuntary chapter 11 case to proceed would serve creditor interests by checking the debtor's ability to delay its reorganization. Unlike in the Cayman Islands, where creditors cannot file a competing scheme of arrangement, chapter 11 provides for expiration of the debtor's exclusive right to file a plan. The bankruptcy court observed that "the mere possibility of an eventual creditor plan can affect the negotiating dynamics from day one of the case."[11]

Later developments reinforced the bankruptcy court's evidence-driven approach. After Xinyuan renewed its bid to dismiss the involuntary petition based on a Hong Kong lawsuit and alleged bad faith by a petitioning creditor, Judge Bentley set a July 8, 2026, hearing requiring Xinyuan to show evidence to substantiate such allegations. The same day that Xinyuan renewed its bid, trading in Xinyuan was suspended on the Hong Kong Stock Exchange, adding further uncertainty to the debtor's already contested restructuring posture.

Structural Boundaries of Abstention

Whereas *Modern Land* involved a debtor arriving at the courthouse door with a finished foreign reorganization seeking ancillary U.S. assistance, *Oi S.A.* presents the mirror image: The debtor sought to terminate the ancillary proceeding and clear the way for a possible chapter 11 filing. Oi S.A., a Brazilian telecommunications company, confirmed its Brazilian reorganization plan in 2024, which was enforced in its chapter 15 case. After confirmation, liquidity deteriorated, and Brazilian law allegedly barred a new proceeding for five years and prevented amendment of the confirmed plan to further restructure post-petition debts. Oi S.A. moved to dismiss the chapter 15 cases to clear a path for a U.S. chapter 11 filing that could address post-petition indebtedness and other liabilities outside the scope of a Brazilian proceeding.

The *Oi S.A.* decision addresses an important structural question: whether § 305 can dismiss a chapter 15 case to facilitate the filing of chapter 11. Judge Beckerman examined § 305's interrelation with other key Bankruptcy Code provisions.

The Omission of § 305 from § 103(a) Creates a Conflict

Section 103(a) identifies Bankruptcy Code provisions that apply in chapter 15 cases, but does not include

7 *Xinyuan*, 2026 WL 592250, at *7 (emphasis added).

8 *Id.* at *1.

9 *Id.* at *8.

10 *Id.* at *12.

11 *Id.*

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§ 305.[12] At the same time, § 305 applies by its terms to any case under title 11, and chapter 15 is a case under title 11.

Section 305(a)(2) also expressly references chapter 15, allowing a court to dismiss or suspend where "the purposes of chapter 15 of this title would be best served by such dismissal or suspension."[13] This textual overlap between §§ 103(a) and 305 creates the key tension over whether abstention is available in chapter 15 cases.

The Inclusion of § 305 in § 1529(4) Does Not Resolve the Conflict

Although § 305 is omitted from § 103, it is expressly referenced in § 1529(4), which authorizes such relief to promote cooperation and coordination under §§ 1528 and 1529. Section 1529(4) applies only where there is "a foreign proceeding *and* a case under *another* chapter of [title 11] pending concurrently regarding the same debtor."[14]

Section 1528 limits a case filed after recognition of a foreign main proceeding: The effects of a later chapter 7 or chapter 11 case are restricted to U.S.-territorial assets.[15] Thus, the prior recognition of the Brazilian proceeding as foreign main in *Oi S.A.* limited the debtor's ability to obtain a "global" chapter 11 restructuring.

Only Chapter 15 Proceedings Are Excepted from Jurisdictional Abstention

The bankruptcy court in *Oi S.A.* considered abstention under 28 U.S.C. § 1334. Section 1334(c)(1) provides that, "except with respect to a case under chapter 15 of title 11 (the "Excepting Clause")," nothing in § 1334 prevents a district court from abstaining from hearing "a particular proceeding" arising under, arising in, or related to a bankruptcy case.[16] The Excepting Clause has generated two competing interpretations of what the clause modifies:

> Interpretation One: The Excepting Clause modifies chapter 15 cases. Under this broader reading, the Excepting Clause means that courts cannot abstain from chapter 15 matters because § 1334(c)(1) generally permits abstention from proceedings, and the exception removes chapter 15 from that abstention authority.
>
> Interpretation Two: The Excepting Clause modifies a proceeding under a chapter 15 case. Under this narrower reading, the clause must be read with the remainder of the sentence, which permits abstention only from "a particular proceeding." The exception bars abstention from proceedings arising under, arising in, or related to chapter 15 cases, but it does not affect the chapter 15 case itself.

Judge Beckerman adopted the narrower interpretation, reasoning that the Excepting Clause must be read in context with the rest of § 1334(c)(1). As this interpretation does not resolve the §§ 305 and 103(a) conflict, Judge Beckerman turned to the legislative history and purposes underlying chapter 15.

Reconciling §§ 305 and 103(a): Section 305 Not Available to Dismiss a Chapter 15 Case

The *Oi S.A.* court reconciled §§ 305 and 103(a) by starting with chapter 15's ancillary function. Chapter 15 is titled "Ancillary and Other Cross-Border Cases," and its stated purpose is to "provide effective mechanisms for dealing with cases of cross-border insolvency."[17] The bankruptcy court also looked to Congress's policy that U.S. courts should act "ancillary to a foreign main proceeding whenever possible," including by using § 305 to "stay or dismiss the United States case under the other chapter."[18]

Read in that context, § 305 still has work to do after recognition: It may be used to dismiss or suspend a separate plenary U.S. case filed under another chapter, such as chapter 7 or chapter 11. But that reasoning did not support using § 305 to dismiss the chapter 15 case itself. Dismissing a chapter 15 case — the mechanism for ancillary cooperation — would not further chapter 15's purpose. That conclusion was reinforced by chapter 15's structure: Unlike other chapters, chapter 15 contains no specific dismissal provision.

Section 1521(a) permits a court, after recognition, to grant "any appropriate relief," but only when that relief is "necessary to effectuate the purpose of" chapter 15 and to protect the debtor's assets or creditor interests. The relevant purposes are supplied by § 1501(a): cooperation between U.S. and foreign courts and other authorities, greater legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of the debtor's assets, and facilitation of the rescue of financially troubled businesses.

Against those objectives, dismissal or suspension of the chapter 15 case itself would not effectuate chapter 15's purpose. It would eliminate the proceeding through which the U.S. bankruptcy court cooperates with the recognized foreign proceeding, reduce the bankruptcy court's ability to protect creditors and assets through coordinated relief, and leave any hoped-for chapter 11 filing speculative. For that reason, the bankruptcy court concluded that § 1521 could not be used as an alternative basis to dismiss or suspend chapter 15 cases.

Even if § 305 applied, the bankruptcy court found dismissal inappropriate under chapter 15's objectives. A key distinction in *Oi S.A.* was that the Brazilian proceeding had already been recognized as a foreign main proceeding. Dismissal would not promote court-to-court cooperation, especially where the Brazilian appellate court stated that maintaining the chapter 15 cases was "necessary and essential for the effectiveness" of the pending Brazilian proceeding.[19] Thus, unlike cases where comity supports stepping back from a U.S.

12 *See* 11 U.S.C. § 103(a).

13 *Id.* § 305(a)(2).

14 *Id.* § 1529(4).

15 *See id.* § 1528.

16 28 U.S.C. § 1334.

17 11 U.S.C. § 1501(a).

18 *Oi S.A.*, 674 B.R. at 202.

19 *Id.* at 204.

case in favor of a foreign process, comity in *Oi S.A.* supported keeping a recognized chapter 15 case open.

Conclusion

Modern Land and *Xinyuan* show that bankruptcy courts may support a foreign restructuring in a letterbox jurisdiction based on a domiciliary COMI presumption where creditor support is strong and the foreign court has approved the restructuring. *Oi S.A.* supplies a structural boundary: Even where chapter 11 may offer better tools, § 305 cannot dismantle an already recognized chapter 15 framework. Together, the cases reflect a practical, creditor-focused framework that respects comity and foreign proceedings where warranted, while preserving chapter 15 as the statutory mechanism for cross-border cooperation once recognition has been granted. abi