

American Bankruptcy Institute

Annual Spring Meeting

Expanding Borders: How Global Cases Are Shaping Cross-Border Insolvency Tools

Hosted by the Bankruptcy Litigation and International Committees

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CONCURRENT SESSION

2026



Cross Border Recognition – Update from Germany (1/3)

Spark Networks SE: German StaRUG restructuring combined with US Chapter 15

- Spark Networks SE: German HoldCo of globally active dating portal operator with main business focus on the US
  - Nasdaq listed (ADS structure), mostly US staff and subsidiaries, clients mainly in the US, US financing (MGG)
  - German Headquarters, HoldCo registration, some staff located in Germany
- German StaRUG proceeding allows for release of affiliate security interests granted to third parties, e.g. guarantees
- **Restructuring Plan:** **(i)** reorganization of debt and equity of Spark Networks SE
  (ii) reorganization of co-borrower liability of *US non-debtors* Spark Networks Inc. and Zoosk Inc.
- **US Chapter 15 recognition** (uncontested): **(i)** Spark Networks SE: foreign *main* proceeding; **(ii)** Spark Networks Inc. & Zoosk Inc.: foreign *nonmain* proceeding, although no *formal* proceeding pending for *nondebtors* in Germany!
- **But no reciprocity on international jurisdiction:** German international insolvency law does not recognize the effects of a confirmed US Chapter 11 reorganization plan for US group bankruptcies including debtor entities with German COMI
- **Conclusion**: New restructuring proceedings – e.g. StaRUG – give rise to new potential challenges; appeals before the German Constitutional Court (*Bundesverfassungsgericht*) for two major StaRUG proceedings (VARTA and EMAG) are pending
- Hearing for Vote: 12 December 2023; plan confirmation order: 4 January 2024 ➔ *in Germany, don't file before Christmas!*

Dr. H. Philipp Esser – Schultze & Braun – Germany



Cross Border Recognition – Update from Germany (2/3)

Aggregate / Fürst case – Regional Court (*Landgericht*) Frankfurt, 22 Aug. 2025 (2-12 O 239/24)

- Recognition **rejected** of UK Part 26A Restructuring Plan previously sanctioned by English High Court
- Luxemburg HoldCo (Berlin real estate), COMI shift to England, € 1 bn financing restructured, e.g. maturity extended
- Dissenting creditor: *Public Health Care Board of Hessen* suing HoldCo & OpCo in Frankfurt for repayment of loan
- Regional Court (Landgericht) Frankfurt issued *provisional* decision (subject to subsequent *final* decision)
  - No recognition of *Aggregate* UK RP under German international insolvency law, sec. 343 Insolvency Code
    Aggregate UK RP: financial restructuring – no sufficiently "*collective*" proceeding – *questionable! COMI shift?*
  - No recognition as *judgment* under sec. 328 German Civil Procedure Code: evidence for reciprocity *inadmissible*
  - No recognition under 1968 Brussels Convention: superseded by Brussels I Regulation: no post-Brexit resurrection
- Decision not final; appeal pending; mostly criticized – nevertheless sending shockwaves to practitioners
- German Federal Court of Justice generally recognition friendly, but many issues on new proceedings remain unresolved

Dr. H. Philipp Esser – Schultze & Braun – Germany



Cross Border Recognition – Update from Germany (3/3)

Further educational material

- StaRUG in English: see Schultze & Braun website: StaRUG – English convenience translation by Schultze & Braun
- Aggregate / Fürst decision
  - Regional Court of Frankfurt am Main, provisional decision of 22 Aug. 2025 – case no. 2-12 O 239/24 (https://www.rv.hessenrecht.hessen.de/bshe/document/LARE250001106; German only)
  - Prof. Dr. Reinhard Bork, European Insolvency and Restructuring Journal 2026, p. 1 (https://doi.org/10.54195/eirj.25454)
- Spark Networks SE: See *Kroll* restructuring website: https://cases.ra.kroll.com/sparknetworks/Home-Index
- StaRUG proceedings of *VARTA* and *EMAG* currently before the German Constitutional Court (*Bundesverfassungsgericht* – www.bundesverfassungsgericht.de)
- **EU Harmonization Directive**: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202600799 – published in the EU Official Journal on 1 April 2026 - *Directive (EU) 2026/799 of the European Parliament and of the Council of 30 March 2026 harmonising certain aspects of insolvency law*

Dr. H. Philipp Esser – Schultze & Braun – Germany

Expanding Borders: How Global Cases Are Shaping Cross-Border Insolvency Tools

Friday, April 24, 2026
(2:15-3:15)

Panelists:

- Hon. Martin Glenn of the U.S. Bankruptcy Court for the Southern District of New York (New York, NY)
- Leyza B. Florin of Sequor Law (Miami, FL)
- Joseph Curl of South Square (London, United Kingdom)
- Neema Griffin of Teneo (Georgetown, Grand Cayman, Cayman Islands)
- H. Philipp Esser of Schultze & Braun GmbH & Co. (Achern, Germany)

Case References:

- Companies Act 2006 (UK), Part 26A
- *Re La Seda de Barcelona SA* [2010] EWHC 1364 (Ch)
- *Re T&N Ltd* [2006] EWHC 1447 (Ch)
- *Re ColorOz Investment 2 LLC* [2020] EWHC 1864 (Ch)
- *Re Fossil (UK) Global Services Ltd* (convening) [2025] EWHC 2741 (Ch)
- *Re Fossil (UK) Global Services Ltd* (sanction) [2025] EWHC 3058 (Ch)
- *Re DTEK Energy BV (No 2)* [2021] EWHC 1551 (Ch)
- *Re Argo Blockchain PLC* (convening) [2025] EWHC 2951 (Ch)
- *Re Argo Blockchain PLC* (sanction) [2025] EWHC 3395 (Ch)
- *In re: Mega Newco Ltd* (Bankr. S.D.N.Y., Feb. 24, 2025)
- *In re: Avanti Communications Group PLC* (Bankr. S.D.N.Y., Apr.9, 2018)
- *Harrington v Purdue Pharma L.P.* (603 US 204 (2024))
- *In re: Crédito Real* (Bankr. D.Delaware, Apr.1, 2025)

- 'The International Two-Step: Recognizing Domestic Chapter 15 Reorganizations', Bruce A. Markell (American Bankruptcy Law Journal, Vol.98:1:2024)
- LG Frankfurt am Main, 2-12 O 239/24, dated August 22, 2025

Case Materials (Attached)

In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.

United States Bankruptcy Court for the District of Delaware

April 1, 2025, Decided

Chapter 15, Case No. 25-10208 (TMH)

Reporter
670 B.R. 150 *; 2025 Bankr. LEXIS 751 **; 2025 LX 222398; 2025 WL 977967

In re: Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.,[1] Debtor in a foreign proceeding.

Subsequent History: Decision reached on appeal by *Sofom v. De C.V. (In re Real S.A.B.), 2026 U.S. Dist. LEXIS 69149, 2026 WL 881444 (Mar. 31, 2026)*

Counsel: **[**1]** For The Bank of New York Mellon, Creditor: Jason Daniel Angelo, Reed Smith LLP, Wilmington, DE; Cameron A. Capp, LEAD ATTORNEY, United States; Marian Baldwin Fuerst, LEAD ATTORNEY, Norton Rose Fulbright US LLP, New York, NY; Kurt F. Gwynne, LEAD ATTORNEY, Reed Smith LLP, usa; Francisco Vazquez, LEAD ATTORNEY, Norton Rose Fulbright US LLP, New York, NY.

For United States International Development Finance Corporation, Creditor: Benjamin Wiley Butterfield, LEAD ATTORNEY, Morrison & Foerster LLP, New York, NY; Kevin M. Capuzzi, LEAD ATTORNEY, Benesch Friedlander Coplan & Aronoff LLP, Wilmington, DE; John C Gentile, Benesch,Friedlander, Coplan & Aronoff, L, Wilmington, DE; Darren Smolarski, Esq, LEAD ATTORNEY, Morrison & Foerster LLP, New York, NY.

For Credito Real, S.A.B. de C.V., SOFOM, E.N.R., Debtor: John Henry Knight, Richards, Layton & Finger, P.A., Wilmington, DE.

For Ad Hoc Group, Interested Party: David H. Botter, Lucas Davidenco, LEAD ATTORNEY, CLEARY GOTTLIEB STEEN & HAMILTON LLP, New York, NY; Gregory J. Flasser, Shannon Forshay, James R. Risener, III, Christopher M. Samis, LEAD ATTORNEYS, Gregory Joseph Flasser, L. Katherine Good, Potter Anderson & Corroon LLP, Wilmington, DE; **[**2]** Miranda Hatch, Carina S. Wallance, LEAD ATTORNEYS, Cleary Gottlieb Steen & Hamilton LLP, New York, NY.

For Robert Wagstaff, Foreign Representative: Claire M. Campbell, LEAD ATTORNEY, WHITE & CASE LLP, New York, NY. John K. Cunningham, LEAD ATTORNEY, White & Case LLP, Miami, FL; Richard S. Kebrdle, LEAD ATTORNEY, White & Case LLP, Miami, FL; John Henry Knight, Richards, Layton & Finger, P.A., Wilmington, DE; Lilian M. Marques, LEAD ATTORNEY, White & Case LLP, New York, NY; Emily Rae Mathews, Richards, Layton & Finger, Wilmington, DE; Amanda R. Steele, Richards, Layton and Finger, Wilmington, DE.

U.S. Trustee: Timothy Jay Fox, Jr., Office of the United States Trustee, U. S. Department of Justice, Wilmington, DE.

Judges: Thomas M. Horan, United States Bankruptcy Judge.

Opinion by: Thomas M. Horan

Opinion

[1] The last four identifying digits of the tax number and the jurisdiction in which the Chapter 15 Debtor pays taxes is Mexico - 6815. The Chapter 15 Debtor's corporate headquarters is located at Avenida Insurgentes Sur No. 730, 20th Floor, Colonia del Valle Norte, Alcaldía Benito Juárez, 03103, Mexico City, Mexico.

[*154] In its June 27, 2024 decision in Harrington v. Purdue Pharma, L.P.,[2] the Supreme Court held that a chapter 11 plan of reorganization cannot provide for a nonconsensual third-party release of claims against a **[*155]** non-debtor.[3] Following that decision, the international insolvency community has debated whether, under chapter 15, a bankruptcy court nonetheless may enter an order enforcing a *foreign plan* containing such releases. **[**3]** [4] That is the question presented here. At the recognition hearing held in this chapter 15 case on March 11, 2025, in an oral bench ruling, this Court held that such an order is permissible after Purdue and granted enforcement of a Mexican plan containing such releases.

Section 1501 of title 11 of the United States Code (the "Bankruptcy Code") describes the "purpose and scope of application" of chapter 15.[5] When it enacted chapter 15, Congress sought to facilitate cooperation between the courts of the United States and the courts of foreign countries in cross-border insolvency cases and to empower a court exercising bankruptcy jurisdiction to render assistance to the foreign court.[6]

In this case, Robert Wagstaff, the foreign representative (the "Foreign Representative") of Crédito Real, S.A.B. de C.V., SOFOM, E.N.R. (the "Chapter 15 Debtor"), petitioned for entry of an order recognizing the Chapter 15 Debtor's Mexican bankruptcy case (the "Mexican Prepack Proceeding") as a foreign main proceeding.[7] That request was unopposed.

The Foreign Representative **[**4]** also asked this Court to render assistance to the Mexican court by recognizing and enforcing the plan that the Mexican court approved. The parties refer to that plan as the Concurso Plan[8] and the order approving it as the Concurso Order.[9]

The United States International Development Finance Corporation (the "DFC") opposed this relief, arguing that the nonconsensual third-party releases contained in the Concurso Plan are not authorized under chapter 15 and would be "manifestly contrary to the public policy of the United States."[10] This Court overruled that objection and entered its Order Granting (I) Recognition of Foreign Main Proceeding, (II) Full Force and Effect to Concurso Plan and Certain Related Relief (the "Recognition Order").[11] On March 25, 2024, the **[*156]**

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[2] *603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024)*.

[3] *Id. at 226-27* ("Confining ourselves to the question presented, we hold only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants.").

[4] See, e.g., Joshua Kieran-Glennon, Restructuring Update: Third-Party Releases after Purdue Pharma - Solutions in Irish Law, McCann FitzGerald (Nov. 7, 2024), available at https://perma.cc/HR72-YR79; Michelle McGreal, Douglas Deutsch, & Robert Johnson, Purdue Pharma Bankruptcy Ruling Sidesteps Chapter 15 Implications, Bloomberg (July 10, 2024), available at https://perma.cc/5U5G-CXBF.

[5] *11 U.S.C. § 1501*.

[6] Id.; see also *In re ABC Learning Ctrs. Ltd., 728 F.3d 301, 304-05 (3d Cir. 2013)* (examining Congress's purpose in enacting chapter 15 and explaining the objectives of the legislation); *In re Ir. Bank Resolution Corp.(In Special Liquidation), No. 13-12159 (CSS), 2014 Bankr. LEXIS 1990, 2014 WL 9953792, at *9-10 (Bankr. D. Del. Apr. 30, 2014)*, aff'd, *538 B.R. 692 (D. Del. 2015)*.

[7] Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Full Force and Effect to the Concurso Plan and Related Relief Pursuant to *11 U.S.C. §§ 105*, *1507(a)*, *1509(b)*, *1515*, *1517*, *1520* and *1521* (the "Verified Petition") [D.I. 2].

[8] Foreign Rep. Ex 7.

[9] Foreign Rep. Ex. 8.

[10] *11 U.S.C. § 1506*.

[11] D.I. 51.

DFC filed its notice of appeal.[12] This is the Court's written opinion in support of the Recognition Order.[13]

I. Background[14]

The Chapter 15 Debtor was one of Mexico's largest non-bank financial lending institutions.[15] Its customers were located predominantly in Mexico, elsewhere in Latin America, and in the United States.[16] It is a Mexican company, and it held or holds direct or indirect equity interests in entities **[**5]** located in Mexico, the United States, Honduras, Panama, Turks and Caicos, Costa Rica, Nicaragua, Guatemala, and El Salvador.[17]

In 2021, amid a liquidity crisis, the Chapter 15 Debtor began discussions with its key creditors on a restructuring.[18] These negotiations failed, and in June 2022, an ad hoc group of unsecured creditors (the "Ad Hoc Group") filed an involuntary chapter 11 petition against the Chapter 15 Debtor (the "Involuntary Chapter 11 Case").[19]

On June 28, 2022, one of the Chapter 15 Debtor's shareholders commenced a liquidation proceeding in the 52nd Civil State Court of Mexico City, Mexico (the "Mexican Liquidation Proceeding").[20] The court appointed Fernando Alonso-de-Florida Rivero as judicial liquidator (the "Mexican Liquidator").[21]

Then, on July 14, 2022, the Foreign Representative filed a petition under chapter 15 in this Court (the "Prior Chapter 15 Case"), along with a petition for recognition of the Mexican Liquidation Proceeding as a foreign main proceeding.[22] Following these events, the Chapter 15 Debtor, the Mexican Liquidator, the Foreign Representative, and the Ad Hoc Group adjourned pending disputed **[**6]** matters in the Involuntary Chapter 11 Case and the Prior Chapter 15 Case to pursue **[*157]** settlement discussions.[23] These negotiations succeeded, and the Chapter 15 Debtor, the Mexican Liquidator, and the Ad Hoc Group entered into a restructuring support agreement (the "RSA") to implement a global restructuring of the Chapter 15 Debtor's assets

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[12] D.I. 58.

[13] See *Del. Bankr. L.R. 8003-2* ("Any bankruptcy Judge whose order is the subject of an appeal may file a written opinion that supports the order being appealed or that supplements any earlier written opinion or recorded oral bench ruling or opinion within 7 days after the filing date of the notice of appeal.").

[14] This background section is based on the (i) Verified Petition;, (ii) the Declaration of Juan Pablo Estrada Michel Pursuant to *28 U.S.C. § 1746* in Support of the Petitioner's Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Full Force and Effect to the Concurso Plan and Related Relief Pursuant to *11 U.S.C. §§ 105*, *1507(a)*, *1509(b)*, *1515*, *1517*, *1520* and *1521* (the "Estrada Dec.") [D.I. 3] (Foreign Rep. Ex. 2); and (iii) the Supplemental Declaration of Juan Pablo Estrada Michel Pursuant to *28 U.S.C. § 1746* in Support of the Petitioner's Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Full Force and Effect to the Concurso Plan and Related Relief Pursuant to *11 U.S.C. §§ 105*, *1507(a)*, *1509(b)*, *1515*, *1517*, *1520* and *1521* (the "Estrada Supp. Dec.") [D.I. 41] (Foreign Rep. Ex. 11). The Verified Petition, Estrada Dec., and Estrada Supp. Dec. were admitted without objection. Messrs. Wagstaff and Estrada were not cross-examined.

[15] Verified Petition ¶ 1.

[16] Id.

[17] Id. ¶ 4.

[18] Id. ¶ 11.

[19] Id. ¶ 12; In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R., Case No. 22-10696 (TMH) (formerly Case No. 22-10842 (DSJ) in the United States Bankruptcy Court for the Southern District of New York).

[20] Id. ¶ 13.

[21] Estrada Dec. ¶ 48.

[22] Verified Petition ¶ 14; In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R., Case No. 22-10630 (TMH).

[23] Verified Petition ¶ 15.

and liabilities.[24] It was under the terms of the RSA that the Mexican Liquidator commenced the Mexican Prepack Proceeding.[25] The parties agreed that that Foreign Representative would seek recognition here of the Mexican Prepack Proceeding as a foreign main proceeding and an order giving full force and effect to the Concurso Plan.[26]

On October 6, 2023, the Chapter 15 Debtor commenced the Mexican Prepack Proceeding at the direction of the Mexican Liquidator by filing a voluntary petition with the Mexican court.[27] On November 13, 2023, the Mexican Court issued a judgment officially commencing the conciliation stage of the Mexican Prepack Proceeding (the "Concurso Judgment").[28]

The Concurso Judgment imposed protective measures designed to preserve the Chapter **[**7]** 15 Debtor's estate, including a stay on all enforcement and collection actions against the Chapter 15 Debtor's assets and a prohibition on paying obligations due before the date of the commencement of the Mexican Prepack Proceeding.[29] Miguel Escamilla Villa was appointed as the Conciliator[30] of the Mexican Prepack Proceeding.[31] The Concurso Judgment was served on creditors and other parties through publication in a nationwide newspaper and in the Official Journal of the Federation; additionally, a summary of the judgement was registered in the Public Registry of Commerce to ensure that all interested parties, including foreign creditors, were adequately informed.[32]

On March 20, 2024, the Mexican Court issued a judgment of recognition that confirmed the ranking and classification of all the creditors' claims (the "Recognition Judgment").[33]

On May 21, 2024, the Concurso Plan was presented to the creditors recognized under the Recognition Judgment, and on July 1, 2024, with the consent of the majority of the recognized creditors, the Conciliator formally submitted the plan to the Mexican Court.[34] On August 15, 2024, the Mexican Court issued the Concurso Order overruling all objections to **[**8]** the Concurso Plan and finding that the Concurso Plan satisfied all of the requirements of the Mexican Bankruptcy Law and did not violate Mexican public policy.[35] The Concurso **[*158]** Plan received support representing 56.55% of the aggregate outstanding unsecured claims.[36]

The Concurso Plan is consistent with the terms of the RSA and provides for the repayment of creditors who are located in the United States.[37] It establishes the creation of a special purpose vehicle through a Mexican trust, to which almost all of the Chapter 15 Debtor's remaining assets will be transferred.[38]

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[24] Id. ¶ 20; Foreign Rep. Ex. 9.

[25] Verified Petition ¶ 20.

[26] Id.

[27] Id. ¶ 21; Foreign Rep. Ex. 4.

[28] Foreign. Rep. Ex. 5.

[29] Estrada Dec. ¶ 55.

[30] Under Mexican bankruptcy law, the court appoints the Conciliator to work with the debtor and its recognized creditors on an agreement about the debtor's restructuring. See id. ¶ 29 for a description of the role of the Conciliator.

[31] Id. ¶ 56.

[32] Id. ¶ 57.

[33] Id. ¶ 58; Foreign Rep. Ex. 6.

[34] Estrada Dec. ¶ 60.

[35] Id. ¶ 61; see also Ley de Concursos Mercantiles [LCM] (Bankruptcy Law) art. 64, Diario Oficial de la Federación [DOF] 12-5-2000, últimas reformas DOF 14-1-2014 (Mex.) (establishing the requirements for a plan to obtain approval under Mexican Bankruptcy Law).

[36] Estrada Dec. ¶ 62.

[37] Id. ¶ 63.

[38] Id.

Upon the monetization, sale, or assignment of such assets, the corresponding proceeds will be distributed according to the priority scheme set forth in the Mexican Bankruptcy Law, *pari passu* and *pro rata* among unsecured creditors.[39] Upon the distribution, the unsecured claims will be cancelled or extinguished in accordance with the Concurso Plan.[40]

Clause 16 of the Concurso Plan contains exculpatory provisions that shield certain parties who played roles in the negotiation and implementation of the Chapter 15 Debtor's restructuring process, including the Ad Hoc Group, the Mexican Liquidator, the Chapter 15 **[**9]** Debtor's former directors and officers, the Indenture Trustee, and certain related parties (the "Release").[41] These parties are exculpated for any actions or inactions taken during the restructuring process prior to the creditors' formal acceptance of the plan, subject to the Concurso Plan's carve-outs and exceptions.[42] Specifically, the Concurso Plan provides:

> In any event, [the Chapter 15 Debtor] and the Recognized Creditors agree not to bring any action, complaint, suit or claim, as the case may be, against the Participating Recognized Creditors nor [the Chapter 15 Debtor], respectively, as well as their shareholders, its former general manager Felipe Guelfi Regules, liquidator, directors, officers, secretaries, depositaries and officers, and The Bank of New Mellon, as trustee for [the Chapter 15 Debtor]'s foreign-denominated bonds denominated in U.S. dollars, legal tender in the United States of America, and euros, legal tender in the European Union as the case may be, for any act or omission incurred by them during the Bankruptcy
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> > Proceeding and at any time prior to the execution of this Agreement, except for actions, complaints, claims or demands, as the case may be, for acts or omissions **[**10]** of [the Chapter 15 Debtor] that have caused damage or impairment to the Bankruptcy Estate and that they have failed to declare or disclose to the Participating Recognized Creditors during the negotiations of this Settlement Agreement and up to the date of its execution.[43]

As written, the Release is customary in Mexican settlement agreements and is permitted under Mexican Bankruptcy Law.[44] Under the Concurso Order, the Mexican Court determined that the Concurso Plan and the Release are consistent with Mexican Bankruptcy Law and not in violation of the public or individual interest of any specific creditor.[45] The Concurso Order has not been subject to a stay in **[*159]** Mexico, so it remains in effect and is enforceable under Mexican law.[46]

The DFC was an active participant in the Mexican Prepack Proceeding.[47] It filed a proof of claim and objected to the approval of the Concurso Plan on grounds that were unrelated to the Release.[48] On November 21, 2024, the DFC appealed the Concurso Order,

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[39] Id.

[40] Id.

[41] Id. ¶ 66; Concurso Plan, Clause 16.

[42] Concurso Plan, Clause 16.

[43] Concurso Plan Clause 16.

[44] See Estrada Supp. Dec. ¶ 17.

[45] Id. ¶ 25.

[46] Id.

[47] Id. ¶ 22.

[48] Id. ?? 23-24.

challenging, among other things, the Release.[49] On December 10, 2024, the Ad Hoc Group, the Chapter 15 Debtor, and the Conciliator each filed a reply to the DFC's appeal.[50] In their respective briefs, the Chapter **[**11]** 15 Debtor and Ad Hoc Group argued that the Release does not violate Mexican Bankruptcy Law, and they defended the propriety of the Release.[51] The DFC appeal remains pending.[52]

On February 7, 2025, the Foreign Representative filed the Verified Petition, commencing this chapter 15 case and seeking entry of an order recognizing the Mexican Prepack Proceeding and enforcing the Concurso Plan and Concurso Order. The DFC objected.[53]

On March 11, 2025, this Court conducted an evidentiary hearing to consider the Verified Petition and concluded that it possessed the power to grant (i) recognition to the Mexican Prepack Proceeding as a foreign main proceeding, and (ii) comity and full force and effect to the Concurso Plan. The Court accordingly entered the Recognition Order.[54]

II. The DFC Objection

In the DFC Objection, the DFC argued that the Concurso Plan cannot be recognized in its current form because the Release is not authorized under *Bankruptcy Code sections 1507* and *1521*.

It contends that *Bankruptcy Code section 1521(a)* does not include third-party releases as relief available to a foreign debtor. Specifically, the DFC argues that the term "any appropriate relief" used in that section refers to relief available under the Bankruptcy **[**12]** Code. The DFC contends that non-consensual third-party releases are not available. Relatedly, it contends that *Bankruptcy Code section 1507*, which provides that a U.S. court may grant "additional assistance" to a foreign representative, also does not provide for such relief.

The DFC posits that the Foreign Representative wrongly relies on the catchall provisions of *Bankruptcy Code section 1521(a)(7)* and *1507* to justify enforcement of the Concurso Plan. In so doing, it points to Purdue. However, the DFC does not argue that Purdue's refusal to approve a non-consensual third-party release in that chapter 11 case means that such a release cannot be available in chapter 15. Instead, the DFC argues that Purdue offers a framework for thinking about statutory interpretation **[*160]** that means this Court lacks authority to order enforcement of the Release.

The DFC contends that this Court should read the catchall provisions of *Bankruptcy Code sections 1521(a)(7)* and *1507* in the same way the Purdue Court read *Bankruptcy Code section 1123(b)(6)*, and therefore conclude that catchall provisions like these are limiting provisions that provide no authority for enforcement of the Release.

The DFC also argues that the Release is "manifestly contrary to the public policy of the United States" as provided in *Bankruptcy Code section 1506*.

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[49] Id. ¶ 26.

[50] Id. ¶ 27.

[51] Id.

[52] Id. ¶ 23.

[53] See Objection of United States International Development Finance Corporation to Verified Petition for Recognition of Foreign Main Proceeding and Motion for Order Granting Full Force and Effect to the Concurso Plan and Related Relief Pursuant To *11 U.S.C. §§ 105*, *1507(a)*, *1509(b)*, *1515*, *1517*, *1520* and *1521* (the "DFC Objection") [D.I. 30].

[54] Following entry of the Recognition Order, this Court entered orders dismissing the Involuntary Chapter 11 Case and the Prior Chapter 15 Case.

III. Discussion

This is a core proceeding **[**13]** under 28 U.S.C. § 157(b)(2)(P) because it involves "matters under chapter 15 of title 11." The DFC did not contest that recognition of the Mexican Prepack Proceeding under Bankruptcy Code section 1517 was appropriate, and this Court entered an order granting recognition of the Mexican Prepack Proceeding as a foreign main proceeding. As a consequence of that recognition, this Court "shall grant comity or cooperation to the [F]oreign [R]epresentative."[55]

Chapter 15 begins with a policy statement. Section 1501, which is titled "Purpose and scope of application," provides:

> (a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—
>
> (1) cooperation between—
>
> (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
>
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
>
> (2) greater legal certainty for trade and investment;
>
> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
>
> (4) protection and maximization **[**14]** of the value of the debtor's assets; and
>
> (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.[56]

[*161] No other chapter of the Bankruptcy Code sets forth a similar statement about its purpose. The inclusion of this policy statement in section 1501 highlights that the Court should be guided by the main policy goals of chapter 15—cooperation and comity with foreign courts and deference to those courts within the confines established by chapter 15.

The **[**15]** importance of comity is reinforced in section 1507(b), which instructs that the provision of "additional relief" be "consistent with the principles of comity . . . ."[57] It is then further emphasized in section 1509(b)(3), which provides that when a U.S. court grants recognition of a foreign proceeding under Bankruptcy Code section 1517, it "shall grant

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[55] 11 U.S.C. § 1509(b)(3) (directing a court to grant comity if it has granted recognition under section 1517 and subject to any limitations consistent with the policy of chapter 15).

[56] 11 U.S.C. § 1501(a). The language of this section closely tracks the Preamble of the UNCITRAL Model Law of Cross-Border Insolvency, which provides that:

> The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:
>
> (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
>
> (b) Greater legal certainty for trade and investment;
>
> (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
>
> (d) Protection and maximization of the value of the debtor's assets; and
>
> (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

[57] 11 U.S.C. § 1507(b).

comity or cooperation to the foreign representative."[58] Therefore, in deciding the issues presented here, this Court is mindful of the context in which it operates and considers the centrality of cooperation and comity in reaching its decision.

Upon recognition of a foreign main proceeding, the Court has broad discretion to order enforcement of orders entered in a foreign main proceeding, consistent with the guiding principles of comity.[59] These principles of comity are particularly compelling in the bankruptcy context, where "American courts have long recognized the need to extend comity to foreign bankruptcy proceedings, because the equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail."[60] Therefore, when considering whether to enforce an order **[**16]** entered in a foreign main proceeding, U.S. bankruptcy courts should aim to maximize assistance to the foreign court conducting the foreign main proceeding.[61]

Two provisions through which a U.S. bankruptcy court may enforce orders entered in a foreign main proceeding are *Bankruptcy Code sections 1521(a)* **[*162]** and *1507*. The Foreign Representative asked that this Court enforce the Concurso Plan under those sections. *Section 1521(a)* empowers bankruptcy courts to grant appropriate relief, whereas *section 1507* empowers bankruptcy courts to provide additional assistance.

However, *Bankruptcy Code section 1521(a)*'s and *1507*'s broad grants of discretion are limited in multiple ways. A main limitation on the court's discretion under these sections is *Bankruptcy Code section 1506*. That section provides that the court may "refus[e] to take an action governed by [chapter 15] if the action would be manifestly contrary to the public policy of the United States."[62] Refusing to take an action under *Bankruptcy Code section 1506* is an extraordinary act. That section should be "narrowly interpreted, as the word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States."[63] As a consequence, that

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[58] *11 U.S.C. § 1509(b)(3)*.

[59] See *In re Energy Coal S.P.A., 582 B.R. 619, 626-27 (Bankr. D. Del. 2018)* (quoting *In re Daebo Int'l Shipping Co., 543 B.R. 47, 52-53 (Bankr. S.D.N.Y. 2015)*) (explaining that the Bankruptcy Code gives courts "broad discretion" and instructs them to be "guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief"); *In re Grant Forest Prods., Inc., 440 B.R. 616, 621 (Bankr. D. Del. 2010)* (stating that this broad power is designed to promote cooperation between U.S. courts and foreign courts in cross-border insolvency cases); *In re Elpida Memory, Inc., No. 12-10947 CSS, 2012 Bankr. LEXIS 5367, 2012 WL 6090194, at *7-8 (Bankr. D. Del. Nov. 16, 2012)* (reiterating the broad discretion certain sections of chapter 15 accord, consistent with principles of comity). See generally *Hilton v. Guyot, 159 U.S. 113, 164, 16 S. Ct. 139, 40 L. Ed. 95 (1895)* (defining comity as the "recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws").

[60] *In re Energy Coal S.P.A., 582 B.R. at 627* (quoting *In re Atlas Shipping A/S, 404 B.R. 726, 733 (Bankr. S.D.N.Y. 2009)*) (internal quotation marks and alterations omitted). See generally *In re ABC Learning Ctrs. Ltd., 728 F.3d at 304-07* (discussing the origins of chapter 15 and emphasizing the role of comity in bankruptcy proceedings).

[61] See *In re ABC Learning Ctrs. Ltd., 728 F.3d at 306* (explaining that chapter 15 directs U.S. courts to act "in aid of the main proceedings, in preference to a system of full bankruptcies . . . in each state where assets are found" (quoting H.R. Rep. No. 109-31(1), at 109 (2005) reprinted in 2005 U.S.C.C.A.N. 88, 171)).

[62] *11 U.S.C. § 1506*.

[63] *In re RSM Richter Inc. v. Aguilar (In re Ephedra Prods. Liab. Litig.), 349 B.R. 333 (S.D.N.Y. 2006)* (citing H.R. Rep. No. 109-31(I) at 109, reprinted in 2005 U.S.C.C.A.N. 88, 172).

authority rarely is exercised.[64]

Under *Bankruptcy Code section 1506*, the Court's discretion to enforce orders of a foreign court is circumscribed by fundamental policies of fairness. Since before the enactment of chapter 15, for a U.S. bankruptcy court to enforce an order of a foreign court in an insolvency proceeding, courts have required that the foreign proceeding afford litigants the same fundamental protections that they would have received in a U.S. court.[65] Relief that is **[*163]** granted in a foreign proceeding does not have to be identical to relief that might be available in a U.S. proceeding.[66] Instead, the cases teach that we should look to the fairness of the foreign proceeding.[67] Therefore, as a

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[64] See ***In re PT Bakrie Telecom Tbk, 628 B.R. 859, 890-91 (Bankr. S.D.N.Y. 2021)*** (reading the public policy exception narrowly because the word "manifestly" restricts it to the "most fundamental" U.S. policies and finding that, prior to Purdue, non-consensual third-party releases were not manifestly contrary to U.S. public policy); *In re Sino-Forest Corp., 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013)* (emphasizing that courts should construe this section narrowly and finding that, prior to Purdue **[**17]**, non-consensual third-party releases were not manifestly contrary to U.S. public policy); *In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010)* (construing the section narrowly and finding that, prior to Purdue, U.S. bankruptcy courts could enforce non-consensual third-party releases because they were not manifestly contrary to U.S. public policy). Compare *In re Rede Energia S.A., 515 B.R. 69, 98 (Bankr. S.D.N.Y. 2014)* (stating that *section 1506* should be construed narrowly and used sparingly and finding that to enact the Brazilian plan would not be manifestly contrary to the public policies of the United States because "Brazilian bankruptcy law meets our fundamental standards of fairness and accords with the course of civilized jurisprudence"), with *In re Toft, 453 B.R. 186, 198 (Bankr. S.D.N.Y. 2011)* (finding that while a difference in U.S. law from the foreign law does not necessarily preclude enforcement under chapter 15, the plan component at issue was affirmatively banned under U.S. law, enforcement would subject the enforcer to criminal liability, and enforcement would directly compromise privacy rights established in a comprehensive statutory scheme and based on constitutional rights).

[65] Courts are divided on the statutory source of this limitation, but they agree that it is a central tenet of whether to afford foreign orders comity in insolvency proceedings, and it has remained so throughout multiple iterations of the Bankruptcy Code and the U.S. bankruptcy system itself. See *Vertiv, Inc. v. Wayne Burt PTE, Ltd., 92 F.4th 169, 180 (3d Cir. 2024)* (holding that a court should examine the foreign proceeding's fairness pursuant to principles of comity); *In re Irish Bank Resol. Corp., 2014 Bankr. LEXIS 1990, 2014 WL 9953792 at *18* (explaining that a court must examine the procedural fairness of the foreign proceedings pursuant to the public policy exception of *section 1506*); ***In re PT Bakrie Telecom Tbk, 628 B.R. at 884*** (clarifying that the considerations of fairness a court must examine in its determination of whether to enforce an order of a foreign court overlap with the considerations of *Bankruptcy Code sections 1521* and *1507*, all combining to "assure the just treatment and protection against prejudice of claim holders in the United States through adequate procedural protections"); *In re Rede Energia S.A., 515 B.R. at 90* (holding that *Bankruptcy Code section 1507* establishes the fairness considerations that courts must examine in determining whether to grant comity to a foreign court's order); *In re Sino-Forest Corp., 501 B.R. at 662-63* (emphasizing the importance of ensuring fairness in the foreign proceeding when determining whether to grant a foreign order comity under chapter 15); *In re Atlas Shipping A/S, 404 B.R. at 733* (explaining that before Congress enacted *chapter 15, Bankruptcy Code section 304* required bankruptcy courts, when considering whether to enforce foreign orders, to determine that such enforcement would not prejudice the rights of U.S. citizens); *Phila. Gear Corp. v. Phila. Gear de Mex., S.A., 44 F.3d 187, 193-94 (3d Cir. 1994)* (directing the District Court, in determining whether to grant comity to a Mexican proceeding, to make findings on certain considerations of fairness, including whether the Mexican court was a duly authorized tribunal, whether the plan provided for equal treatment of creditors, whether recognition would be inimical to the U.S. policy of equality, and whether the U.S. creditor would be prejudiced); *Canada S. Ry. Co. v. Gebhard, 109 U.S. 527, 536, 3 S. Ct. 363, 27 L. Ed. 1020 (1883)* (considering whether to afford comity to a Canadian insolvency plan and determining that the Canadian proceedings did not deprive creditors of their property without due process of law).

[66] *In re Metcalfe, 421 B.R. at 697* (explaining that enforcement of relief in a foreign plan does not require identical relief to be available in the United States); *In re Toft, 453 B.R. at 198* (emphasizing that the mere fact that U.S. law differs from the law of the foreign main proceeding does not preclude enforcement as "manifestly contrary" to U.S. public policy).

[67] See *In re Elpida Memory, Inc., 2012 Bankr. LEXIS 5367, 2012 WL 6090194, at *7-8* (explaining that comity is limited to instances where U.S. parties are provided the same fundamental protections that litigants in the United States would receive and finding that *Bankruptcy Code section 1520(a)* requires U.S. Bankruptcy Courts to apply the standard for a sale of assets under ***Bankruptcy Code section 363*** to

matter of comity, if the forum of the foreign proceeding offers "a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting," the judgment should **[**18]** be enforced.[68]

[*164] A. Statutory Interpretation of *Bankruptcy Code Sections 1521(a)* and *1507*

The DFC argues that the Supreme Court's analysis of *Bankruptcy Code section 1123(b)* in Purdue changes the way courts should interpret *sections 1521(a)* and *1507*. It does not.

This section begins by recounting the DFC's argument in further detail. Next, it examines the plain meaning of the language in *Bankruptcy Code sections 1521(a)* and *1507*. Then, it analyzes congressional intent through canons of statutory construction to confirm the plain meaning **[**19]** interpretation. As it proceeds through the plain language analysis and then the canons of construction analysis, it also compares the conclusions derived from *sections 1521(a)* and *1507* to *section 1123(b)(6)* and the conclusions the Supreme Court derived from that section. Because the power to enforce the Concurso Plan and the Concurso Order may only derive from *Bankruptcy Code sections 1521(a)(7)* or *1507(a)* (the "Chapter 15 Catchalls"), the focus of this analysis is on those subsections.

The DFC specifically argues that the Chapter 15 Catchalls are analogous to the catchall provision of *Bankruptcy Code section 1123(b)(6)*, so the Court should interpret them all the same way.[69] *Section 1123(b)* enumerates certain relief that a chapter 11 plan may provide. *Subsection (6)*—or, as the Supreme Court refers to it in Purdue, the "catchall"—provides that a chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title."[70] The Purdue Court held that

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comport with this limitation); ***In re Agrokor d.d., 591 B.R. 163, 184 (Bankr. S.D.N.Y. 2018)*** (construing *section 1506* to allow deference to the foreign court so long as the foreign proceedings are procedurally fair and not manifestly contrary to U.S. public policy); *In re Atlas Shipping A/S, 404 B.R. at 733* ("Federal courts generally extend comity whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.").

[68] *Hilton v. Guyot, 159 U.S. 113, 202-03, 16 S. Ct. 139, 40 L. Ed. 95 (1895)*; accord *In re Metcalfe, 421 B.R. at 698*; see also *In re Elpida Memory, Inc., 2012 Bankr. LEXIS 5367, 2012 WL 6090194, at *7* (requiring, for enforcement of the foreign plan, that the foreign proceeding afford the litigants the same fundamental protections that they would receive in the United States); ***In re PT Bakrie Telecom Tbk, 628 B.R. at 878-79*** (looking to Hilton and other cases for factors of fairness in determining whether to grant comity). In examining the procedural fairness of a foreign main proceeding, courts have also looked at:

> (1) whether creditors of the same class are treated equally in the distribution of assets; (2) whether the liquidators are considered fiduciaries and are held accountable to the court; (3) whether creditors have the right to submit claims which, if denied, can be submitted to a bankruptcy court for adjudication; (4) whether the liquidators are required to give notice to the debtors' potential claimants; (5) whether there are provisions for creditors' meetings; (6) whether a foreign country's insolvency laws favor its own citizens; (7) whether all assets are marshalled before one body for centralized distribution; and (8) whether there are provisions for an automatic stay and for the lifting of such stays to facilitate the centralization of claims.
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> *Vertiv, Inc. v. Wayne Burt PTE, Ltd., 92 F.4th at 181* (internal alterations omitted); accord ***In re PT Bakrie Telecom Tbk, 628 B.R. at 879*** (quoting *Allstate Life Ins. v. Linter Grp., 994 F.2d 996, 999 (2d Cir. 1993)*); *In re Sino-Forest Corp., 501 B.R. at 662-63* (quoting *Finanz AG Zurich v. Banco Economico S.A., 192 F.3d 240, 249 (2d Cir. 1999)*).

[69] DFC Objection at 4.

[70] *11 U.S.C. 1123(b)(6)*.

subsection (6) does not allow a chapter 11 plan to include nonconsensual third-party releases when interpreted in light of its surrounding context pursuant to the statutory canon of *ejusdem generis*.[71] It explained that the other provisions in section 1123(b) authorized relief that concerns the debtor, its rights and responsibilities, and its relationship with its creditors. **[**20]** [72] Because none of the other provisions in section 1123(b) consider a third-party's relationship with a creditor, the Supreme Court explained, subsection (6) must be interpreted in that context and should not extend to govern a third-party's relationship with a creditor by granting nonconsensual third-party releases.[73]

The DFC urges this Court to apply a similar analysis to sections 1521(a)(7) and 1507(a). It asserts that because those subsections are catchalls, like section 1123(b)(6), and because neither section 1521(a) nor 1507 discusses third-party relationships, then the Chapter 15 Catchalls **[*165]** should not extend to allow nonconsensual third-party releases. Neither the plain language nor canons of statutory interpretation support the DFC's arguments.

In determining how to interpret sections 1521(a) and 1507, "[o]ur interpretation . . . starts 'where all such inquiries must begin: with the language of the statute itself.'"[74] If the text of the statute is unambiguous, we construe it according to its plain meaning.[75] If it is ambiguous, then we turn to legislative history and the canons of construction to determine congressional intent in enacting the statute.[76] However, "[i]n any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation[.]"[77]

Section 1521, subsection (a) provides:

> Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—
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> (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities

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[71] Purdue, 603 U.S. at 217-18.

[72] Id. at 218.

[73] Id.

[74] Ransom v. FIA Card Services, N.A., 562 U.S. 61, 69, 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011) (quoting United States v. Ron Pair Enters., 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989)); see **[**21]** also In re Phila. Newspapers, LLC, 599 F.3d 298, 304 (3d Cir. 2010), as amended (May 7, 2010) ("It is the cardinal canon of statutory interpretation that a court must begin with the statutory language.").

[75] See Jensen v. Pressler & Pressler, 791 F.3d 413, 418 (3d Cir. 2015) ("Our interpretive task begins and ends with the text of the statute unless the text is ambiguous or does not reveal congressional intent with sufficient precision to resolve our inquiry." (internal quotations omitted)); Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there."); In re Smale, 390 B.R. 111, 113 (Bankr. D. Del. 2008) ("[T]he starting point is to examine the plain meaning of the text of the statute. . . . '[W]hen a statute's language is plain, the sole function of the courts, at least where the disposition by the text is not absurd, is to enforce it according to its terms.'" (quoting Hartford Underwriters Ins. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000))).

[76] See In re WW Warehouse, Inc., 313 B.R. 588, 591 (Bankr. D. Del. 2004) ("If, after a studied examination of the statutory context, the natural reading of a provision remains elusive, the statute is ambiguous and the Court must seek guidance beyond the statutory text." (internal quotations omitted)); In re Smale, 390 B.R. at 114 ("[A]pplying the plain meaning of the statute is the default entrance—not the mandatory exit.").

[77] Conn. Nat'l Bank v. Germain, 503 U.S. at 253.

to the extent they have not been stayed under section 1520(a);

(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, **[*166]** including an examiner, authorized by the court;

(6) extending **[**22]** relief granted under section 1519(a); and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).[78]

Meanwhile, section 1507 provides:

(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

(1) just treatment of all holders of claims against or interests in the debtor's property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of the debtor;

(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding **[**23]** concerns.[79]

The plain language of the two sections demonstrates that the DFC's interpretation is incorrect for multiple reasons. Beginning with section 1521, subsection (a) enumerates some relief that a bankruptcy court may grant at the request of a foreign representative. However, the section begins by explaining the court may grant "any" appropriate relief. Even though that statement is followed by a list of some relief a court may grant, the word "including" indicates that the enumerated relief is not a complete and exclusive list. Congress expressly addresses the term "including" at Bankruptcy Code section 102(3), providing that the word

[78] 11 U.S.C. § 1521(a).

[79] 11 U.S.C. § 1507.

"'includes' and 'including' are not limiting."[80] This definition codifies the rule of statutory construction that the terms "includes" and "including" are illustrative, and not exclusive or limiting.[81]

It is true that when comparing this "any . . . including" language to that in *section 1123(b)*, they are, at first blush, similar. *Section 1521(a)* allows a bankruptcy court to "grant any appropriate relief, including . . . any additional relief" while *section 1123(b)* allows a plan to "include any other appropriate provision." But the critical difference lies in the language that qualifies "any . . . including" in each section.

Section 1521(a) qualifies that language **[**24]** by explaining that any additional relief a court grants should be of the kind that is **[*167]** available to a trustee,[82] and then lists relief that a court should not grant. It is well-settled that enforcement of a third-party release contained in a foreign plan is appropriate under that section.[83]

Meanwhile, *section 1123(b)* simply states that a court may include any "other" chapter 11 plan provision that is not "inconsistent with the applicable provisions of this title." In Purdue, the Supreme Court explained that the word "other" directs courts to look to the other provisions in *section 1123(b)* to determine what further relief a court could grant.[84] By looking at *section 1123(b)(1)-(5)*, the Supreme Court thus concludes that *subsection (6)* should only grant similar relief, as in relief that concerns the debtor and its rights, responsibilities, and relationships.[85] However, *section 1521(a)* does not direct courts to look to the "other" provisions when providing relief under its catchall.[86] Instead, *section 1521(a)* allows courts to grant "any additional relief that may be available to a trustee."[87] Accordingly, *section 1521(a)* does not direct courts to limit its relief to the kind afforded in other provisions, but rather, to relief available **[**25]** to a trustee. Because the relief in question would be available to a trustee, it is permissible under *section 1521(a)(7)*.

Second, *section 1521(a)(7)* qualifies its "any . . . including" language by listing specific relief that a court is not permitted to grant under that section.[88] That list of prohibited relief does not include nonconsensual third-party releases.[89] By establishing explicit boundaries, Congress allowed relief that does not exceed those boundaries.

On the other hand, in *section 1123(b)*, rather than provide specific prohibited relief, Congress directs courts to look to the whole of the Bankruptcy Code to determine if the requested provision is consistent with it. In

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[80] *11 U.S.C. § 102(3)*.

[81] See, e.g., *Am. Sur. Co. v. Marotta, 287 U.S. 513, 517, 53 S. Ct. 260, 77 L. Ed. 466 (1933)* (overruling lower court that found the word "includes" in *section 1(9) of the Bankruptcy Act of 1898* to be one of limitation); *Friedman v. P+P, LLC (In re Friedman), 466 B.R. 471, 482, n.20 (B.A.P. 9th Cir. 2012)* (explaining and providing sources to support the proposition that "including" is not a word of limitation).

[82] The term "trustee" is defined in chapter 15 as "includ[ing] a trustee [and] a debtor in possession in a case under any chapter of this title . . . ." *11 U.S.C. § 1502(6)*.

[83] See, e.g., *In re Arctic Glacier Int'l, Inc., 901 F.3d 162 (3d Cir. 2018)* (enforcing third party releases in a Canadian plan of arrangement); *In re Avanti Communs. Grp. PLC, 582 B.R. at 618* (finding that it had the power to enforce third-party releases under either *section 1521(a)(7)* or *section 1507(a)*).

[84] *Purdue, 603 U.S. at 218*.

[85] *Id. at 218-19*.

[86] *11 U.S.C. § 1521(a)(7)*.

[87] Id.

[88] *11 U.S.C. § 1521(a)(7)* ("except for relief available under *sections 522*, *544*, *545*, *547*, *548*, *550*, and *724(a)*").

[89] Id.

Purdue, the Supreme Court framed this section as one that "set[s] out a detailed list of powers, followed by a catchall."[90] It explained, "Congress could have said in [section 1123(b)](6) that 'everything not expressly prohibited is permitted[]'" but instead limited it to "any other appropriate provision not inconsistent with the applicable provisions of this title."[91] In comparison, in section 1521(a)(7), Congress did expressly enumerate what it wanted to prohibit; in a chapter 15 case, a court cannot grant relief under sections 522, 544, 545, 547, 548, 550, and 724(a). By specifically enumerating relief that the court cannot **[**26]** grant under section 1521, Congress more concretely defined the outer bounds of what the court can grant, thus also more concretely defining what is included in what the court can **[*168]** grant, bearing in mind the guiding principles of comity and cooperation.

Briefly turning to a canon of statutory construction before moving onto examining the plain language of section 1507, the canon of *expressio unius* confirms this reading of the express prohibitions established in section 1521(a)(7). "*Expressio unius est exclusio alterius*" stands for the proposition that the expression of one thing means the exclusion of another.[92] By establishing a list of relief that courts should not grant under section 1521(a)(7), the section implies that other forms of relief not expressly prohibited are permitted. Therefore, enforcing foreign orders providing for nonconsensual third-party releases is within the scope of authority that section 1521(a) provides.

Section 1507 similarly affords courts a broad grant of authority to provide relief while setting out express limitations. Section 1507 establishes that a court may provide "additional assistance to a foreign representative" if the court has recognized the proceeding. Notwithstanding that the term "additional assistance" is a broad term at the outset, it also **[**27]** suggests that even if a court cannot grant relief under section 1521(a)(7), it may grant relief under section 1507. Thus, section 1507 implies an even more expansive grant of power than already found in section 1521(a).

However, section 1507 does have limitations. First, it states that any assistance should be "[s]ubject to the specific limitations stated elsewhere in this chapter[.]"[93] Therefore, in determining whether relief may be granted as part of section 1507's "additional assistance," a court should look to the remainder of chapter 15 to guide its decision. Nevertheless, this instruction differs from section 1123(b)(6)'s instruction to look at subsections (1)-(5) to contextualize appropriate relief because chapter 15 covers a broader array of topics than section 1123(b)(1)-(5), which is limited to matters concerning and connected to the debtor. Section 1507's instruction also differs from section 1123(b)(6)'s other instruction that any other provisions not be inconsistent with applicable provisions of "this title" (as in, the Bankruptcy Code). Chapter 15 has a much different purpose and context—mainly to promote comity and international cooperation—thus entailing different limitations when compared to the Bankruptcy Code at large.[94] Accordingly, relief that is appropriate subject to limitations in chapter 15 must be different than relief that is **[**28]** not

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[90] Purdue, 603 U.S. at 218.

[91] Id.; 11 U.S.C. § 1123(b)(6).

[92] In re Thompson, 217 B.R. 375, 378 n.5 (B.A.P. 2d Cir. 1998).

[93] 11 U.S.C. § 1507(a).

[94] See 11 U.S.C. § 1501 (establishing the scope and purpose of chapter 15).

inconsistent with the applicable provisions of the Bankruptcy Code.

Second, *section 1507(b)* establishes a list of considerations for courts when determining whether to provide such additional assistance. Those factors, like much of chapter 15, focus on whether relief would be "consistent with principles of comity[.]"[95] They direct a court to confirm that any additional assistance would reasonably assure just treatment of creditors, protection of U.S. claim holders against prejudice, prevention of preferential or fraudulent transfers, equitable distribution of assets in accordance with the Bankruptcy Code, and the provision of an opportunity for a fresh start for the debtor.[96]

[*169] By adding this list of considerations, Congress again established boundaries for courts in granting relief under chapter 15 and directed courts on how to determine if it is appropriate to grant relief. And again, these express prohibitions provide a more explicit and fuller picture of the broad relief a court may grant, as compared to that in *section 1123(b)(6)*, and they direct a court to focus on principles of comity when considering granting the relief. Because comity is central to chapter 15, the relief granted in the foreign court does **[**29]** not have to be available in U.S. courts under chapter 11.[97] In other words, U.S. courts do not have to reject relief solely because it would be unavailable in the United States. However, there must be metrics to assess whether the proposed relief is appropriate. *Section 1507(b)* solves that problem by providing these considerations while prioritizing comity to foreign courts.

As with *section 1521*, *section 1507* thus differs from *section 1123(b)* because *section 1123(b)* does not expressly establish specific boundaries; instead, it directs courts to look to the rest of the Bankruptcy Code to determine whether a provision is appropriate. Because Congress expressed specific prohibitions, courts do not need to read further into its words like they do for *section 1123(b)*.[98] The plain language of *section 1507* (and *section 1521*) already enumerates the boundaries unambiguously.

Here, the Mexican Prepack Proceeding provided all the protections set out in *section 1507(b)*.[99] Therefore, *section 1507* allows this Court to enforce the relief entered in the Mexican Prepack Proceeding.

Accordingly, the plain language of both *section 1521(a)(7)* and *section 1507(a)* permit a U.S. court to enforce a foreign order for nonconsensual third-party releases. Nevertheless, even if the Chapter 15 Catchalls are ambiguous, the legislative history and canons of statutory construction **[**30]** confirm this interpretation and corresponding Congressional intent.[100]

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[95] *11 U.S.C. § 1507(b)*.

[96] Id.

[97] *In re Metcalfe, 421 B.R. at 697*.

[98] See *Kaufman v. Allstate N.J. Ins., 561 F.3d 144, 155 (3d Cir. 2009)* ("In interpreting a statute, the Court looks first to the statute's plain meaning and, if the statutory language is clear and unambiguous, the inquiry comes to an end." (citing *Conn. Nat'l Bank v. Germain, 503 U.S. at 253-54*)).

[99] For a fuller discussion of the fairness of the Mexican proceeding, see infra section B on *section 1506*'s public policy considerations.

[100] Even where the plain language of a statute is ambiguous, courts will often examine the congressional intent to confirm their interpretation, especially for chapter 15 cases. See *In re Elpida Memory, Inc., 2012 Bankr. LEXIS 5367, 2012 WL 6090194, at *5* ("[I]n interpreting Chapter 15, '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.'" (quoting *11 U.S.C. § 1508*)); *In re Premier Int'l Holdings, Inc., 423 B.R. 58, 63-64 (Bankr. D. Del. 2010)* ("Moreover, regardless of whether the text is plain or ambiguous, it is appropriate to identify, if possible, a congressional purpose

Congress enacted chapter 15 in 2005 as part of the *Bankruptcy Abuse Prevention and Consumer Protection Act* to "provide effective mechanisms for dealing with cases of cross-border insolvency."[101] The legislative history of chapter 15 shows that a major purpose in its enactment was to promote comity for the orders of foreign courts. In fact, as discussed above, *section 1501* explicitly establishes one of its purposes as promoting cooperation between U.S. courts and foreign **[*170]** courts.[102] Further, *section 1508* directs courts "[i]n interpreting this chapter, [to] 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."[103] Thus, granting bankruptcy courts the authority to enforce nonconsensual third-party releases originating in foreign courts would promote chapter 15's goals of comity and providing assistance to foreign courts during foreign insolvency proceedings.[104]

Moreover, in examining multinational laws, as chapter 15 directs, nonconsensual third-party releases are widely accepted by foreign courts. Courts have previously **[**31]** looked to multinational laws in interpreting chapter 15 and determining whether certain relief would comport with international insolvency norms and the UNCITRAL Model Law on Cross-Border Insolvency, on which chapter 15 is based.[105] Other countries recognize nonconsensual third-party releases in insolvency proceedings.[106] Most relevant here, Mexican law provides for such releases.[107] That Mexican law provides for such releases further encourages the authority of this Court to enforce such releases in comity with the Mexican court.

Additionally, the DFC is correct that the sections should be read in their context pursuant to the canon *of ejusdem generis*. The Supreme Court has repeatedly stated that "a 'fundamental canon of statutory construction'[is] that 'the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'"[108] However, the DFC neglects the major differences between the contexts of chapters 11 and 15. Namely, chapter 15 exists to provide assistance to foreign courts by granting comity to their orders.[109] Doing so promotes the purpose of an insolvency proceeding, which is to provide for equitable and orderly distribution **[**32]** of a debtor's assets in a manner that is

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consistent with the Court's interpretation.").

[101] *In re ABC Learning Ctrs. Ltd., 728 F.3d at 304*.

[102] *11 U.S.C. § 1501*.

[103] *11 U.S.C. § 1508*.

[104] See *In re ABC Learning Ctrs. Ltd., 728 F.3d at 306* (finding that chapter 15 directs courts to act in aid of main proceeding and to maximize assistance).

[105] See ***In re Serviços de Petróleo Constellation S.A.., 600 B.R. 237, 273-74 (Bankr. S.D.N.Y. 2019)*** ("[I]t is therefore appropriate for U.S. bankruptcy courts to consider interpretations from other international jurisdictions that have adopted the Model Law." (citing *In re Fairfield Sentry Ltd., 714 F.3d 127, 136 (2d Cir. 2013)*).

[106] See *In re Avanti Communs Grp. PLC, 582 B.R. at 618* (finding such schemes common under United Kingdom law); *In re Metcalfe, 421 B.R. at 699* (explaining that a Canadian court had the power to enter such relief).

[107] See supra note 35, 44-46 and accompanying text (explaining that the Mexican court here found the releases to be valid under Mexican law); *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.), 701 F.3d 1031, 1039-40 (5th Cir. 2017)* (explaining that a Mexican court approved the releases at issue and that relief available in a foreign court need not be identical to or available under U.S. law).

[108] *United States v. Miller, 604 U.S. , 2025 U.S. LEXIS 1279, slip op. at 13 (2025)* (quoting *Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989)*).

[109] See *In re ABC Learning Ctrs. Ltd., 728 F.3d at 306* (explaining courts should "maximize assistance").

enforceable across borders.[110]

Of course, a court's ability to enforce a foreign court's order has limitations, but **[*171]** Congress specified such limitations in the Bankruptcy Code. It specified relief that a court cannot grant under *section 1521(a)(7)*.[111] It provided protections to consider before granting relief under *section 1507*.[112] It established that if such relief is manifestly contrary to public policy or violates a U.S. citizen's fundamental rights or procedural fairness, then it is not available.[113] All these limitations provide boundaries for relief under chapter 15 and ensure that it can have far-reaching consequences, so long as it is within these boundaries.[114] Accordingly, enforcing nonconsensual third-party releases granted in a foreign insolvency proceeding under that country's laws and in a fair proceeding is within this Court's authority under the Bankruptcy Code.

B. The Third-Party Releases Are Not Manifestly Contrary to the Public Policy of the United States

The DFC also contends that the Concurso Plan should not be enforced under the public policy exception of *Bankruptcy Code section 1506*. As explained above "[t]he public policy exception has been narrowly construed, because the **[**33]** 'word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States.'"[115] Therefore, courts should use this exception to deny enforcing foreign relief sparingly.[116]

"The public policy exception applies 'where the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections' or where recognition 'would impinge severely a U.S. constitutional or statutory right.'"[117] The DFC did not object to the fairness of the proceedings, nor did it identify a constitutional or statutory right on which the Concurso Plan impinges. Nonetheless, the facts demonstrate that the Mexican proceeding comported with U.S. standards of procedural fairness, and the Concurso Plan does not violate any constitutional or statutory rights.

In the Mexican Prepack Proceeding, the DFC did not object to the Release and only raised the issue on appeal. There was an opportunity for objection, consistent with our own procedures, but the DFC did not avail itself of that opportunity. Article 164 of the Mexican Bankruptcy Law provides for an opportunity to object to a *concurso* plan, after which the Mexican court is to verify that the *concurso* ***[**34]*** plan complies with all the requirements for a valid plan and is not contrary to public policy; only then can a *concurso* plan be approved.[118] The DFC, having failed to object in the Mexican Prepack

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[110] See *In re Energy Coal S.P.A., 582 B.R. at 627* (quoting *In re Atlas Shipping A/S, 404 B.R. at 733*) (explaining how comity to foreign court orders in the bankruptcy context is particularly important to promote the goals of bankruptcy).

[111] See *11 U.S.C. § 1521(a)(7)* ("except for relief available under *sections 522*, *544*, *545*, *547*, *548*, *550*, and *724(a)*").

[112] See *11 U.S.C. § 1507(b)*.

[113] See *11 U.S.C. § 1506*.

[114] See *In re Atlas Shipping A/S, 404 B.R. at 741* (acknowledging the boundaries for discretionary relief that Congress set in chapter 15).

[115] *In re ABC Learning Ctrs. Ltd., 728 F.3d at 308* (quoting H.R. Rep. No. 109-31(1), at 109 reprinted in 2005 U.S.C.C.A.N. 88, 172).

[116] ***In re ENNIA Caribe Holding N.V., 594 B.R. 631, 640 (S.D.N.Y. 2018)*** (citing *In re Toft, 453 B.R. at 193*).

[117] *In re ABC Learning Ctrs. Ltd., 728 F.3d at 310* (quoting *In re Qimonda AG Bankr. Litig., 433 B.R. 547, 570 (E.D. Va. 2010)*).

[118] Estrada Supp. Dec. ¶ 25.

Proceeding, cannot contend that there was a procedural unfairness, and in fact, does not contend that the Mexican's courts procedures were unfair.

[*172] Even though the DFC does not argue the Mexican proceedings were unfair or identify any facts that would support a finding of unfairness, this Court finds that the Mexican proceedings offered "a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting."[119]

U.S. courts frequently have recognized Mexican *concurso* plans as being the product of a fair process.[120] In so holding, those courts have found that the contested Mexican *concurso* plans embodied arms'-length agreements **[**35]** and conformed to the general distribution priorities established in the Bankruptcy Code.[121] Mexican law also provides for due process to consider objections to a plan.[122] After creditors have been given the opportunity to object, Mexican law provides that the court may verify the plan if it complies with all the requirements for a valid plan and is not contrary to public policy.[123]

The present decision does not diverge from those prior decisions confirming the fairness of Mexican proceedings. The uncontroverted evidence before the Court is that the Concurso Plan's Release is customary and permitted under Mexican law; the Release is the product of arms'-length negotiations among the Chapter 15 Debtor, the Recognized Creditors, and the Shareholders; and the Concurso Plan was approved by a majority of the Recognized Creditors.[124]

It also is undisputed that the DFC played an active role in the Mexican Prepack Proceeding.[125] The DFC filed a proof of claim asserting that it was a privileged creditor.[126] The Mexican Court instead allowed the DFC's claim as an unsecured creditor and granted the DFC status as a Recognized Creditor.[127] The DFC has appealed that ruling, and **[**36]** the appeal remains pending.[128] The DFC did

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[119] *Hilton v. Guyot, 159 U.S. at 202-03*. Some courts have held that even where a claimant does not object to the fairness of the foreign proceeding, the bankruptcy court should nevertheless make a finding that the foreign proceeding was fair. See ***In re PT Bakrie Telecom Tbk, 628 B.R. at 884*** (finding that, to enforce a foreign plan, a bankruptcy court must make a finding that the foreign proceeding abided by fundamental standards of procedural fairness).

[120] See, e.g., *In re Cozumel Caribe, S.A. de C.V., 482 B.R. 96, 114-17 (Bankr. S.D.N.Y. 2012)* (finding a Mexican insolvency proceeding fair); *In re Metrofinanciera, No. 10-20666, 2010 Bankr. LEXIS 6540, 2010 WL 10075953, *3-4 (Bankr. S.D. Tex. Sept. 24, 2010)* (same); *JP Morgan Chase Bank v. Altos Hornos de Mex., S.A. de C.V., 412 F.3d 418, 428 (2d Cir. 2005)* (same).

[121] See, e.g., *In re Metrofinanciera, 2010 Bankr. LEXIS 6540, 2010 WL 10075953, at *3*.

[122] See, e.g., id.

[123] Ley de Concursos Mercantiles [LCM] (Bankruptcy Law) art. 64, Diario Oficial de la Federación [DOF] 12-5-2000, últimas reformas DOF 14-1-2014 (Mex.); see also Estrada Supp. Dec. ¶ 25 (confirming the availability under Mexican law).

[124] Estrada Supp. Dec. ¶¶ 15-21.

[125] Id. ¶ 22.

[126] Id. ¶ 23.

[127] Id.

[128] Id. It bears noting that should the Mexican appellate court determine that the Release is impermissible, the Release would become ineffective here. This Court is not granting the Release. Instead, it is simply enforcing the Concurso Plan. If the Release provision of the Concurso Plan is later altered as a result of the DFC's appeal, the Release would only be

not object to the **[*173]** Release but did object to the Concurso Plan on other grounds.[129] The Mexican Court overruled the DFC's plan objection and entered the Concurso Order approving the Concurso Plan. In so doing, the Mexican Court found that the Concurso Plan complied with Mexican law and "neither the public interest nor the individual interest of any specific creditor is violated, since the terms agreed to will apply to all creditors equally . . . ."[130] The extent of the DFC's participation and the Mexican court's finding that the Concurso Plan would not violate the public interest or the interests of any creditors both emphasize the DFC's opportunity (of which it did not avail itself) to object to the Release before the approval of the Concurso Plan. The Mexican court provided the DFC with a full and fair opportunity to be heard, which is a central tenet of U.S. procedural fairness.[131]

Therefore, in consideration of the fairness of this proceeding, the procedural safeguards typical under Mexican law, and the fact that the DFC has not identified an example of lack of fairness, this Court finds that the Mexican proceeding was procedurally **[**37]** fair.

Likewise, the DFC has identified no constitutional or statutory right upon which the Concurso Plan impinges. Its only argument is that nonconsensual third-party releases are manifestly contrary to U.S. public policy because the Purdue decision prohibits them in most chapter 11 plans.[132] However, far from being "manifestly contrary to the public policy of the United States," nonconsensual third-party releases are expressly permitted under *Bankruptcy Code section 524(g)* in the context of asbestos cases. Furthermore, in Purdue, the Supreme Court noted that while it held that nonconsensual third-party releases are not permitted under chapter 11 (except in the asbestos context under *Bankruptcy Code section 524(g)*), Congress could have authorized them.[133] Indeed, the Supreme Court framed this issue in terms of the policy choices that Congress is authorized to make. To be manifestly contrary to U.S. public policy, the contested relief must impinge on some constitutional or statutory right; if a nonconsensual third-party release impinged on some constitutional right, the Supreme Court would not have said that Congress could provide for it. Accordingly, Congress has authorized nonconsensual third-party releases before, and the Supreme Court has explicitly **[**38]** said that it could do so again in the context of chapter 11 if it so desired. Lack of specific availability in U.S. courts does not equate to manifest contrariness to U.S. public policy, especially where, as **[*174]** here, the contested relief is available in other contexts and could be made available more broadly by a simple act of Congress.[134]

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enforceable in the United States—if at all—to the extent provided by the Concurso Plan.

[129] Id. ¶ 24.

[130] Concurso Order at 60.

[131] Cf. *Vertiv, Inc., 92 F.4th at 181* ("[A] United States court is well within its discretion to deny the extension of comity to foreign proceedings that deny 'notice and opportunity to be heard' to a party opposing comity.").

[132] But see *In re Metcalfe, 421 B.R. at 697* (explaining that even if relief in a foreign order is not typically available in a U.S. proceeding, it may be available in a chapter 15 proceeding pursuant to principles of comity).

[133] See *Purdue, 603 B.R. at 222* (noting that "the [Bankruptcy Code] *does* authorize courts to enjoin claims against third parties without their consent, but does so in only *one* context" (emphasis in original)).

[134] See *In re Metcalfe, 421 B.R. at 697* (so holding); *In re Rede Energia S.A., 515 B.R. at 91* (holding the same and emphasizing that the "public policy exception is clearly drafted in narrow terms and the few reported cases that have analyzed *section 1506* at length recognize that it is to be applied sparingly" (internal quotations and alterations

The In re Vitro S.A.B. de C.V. court makes a similar point. While the Fifth Circuit denied enforcement of a Mexican plan's third-party release provisions, it noted that "although our court has firmly pronounced its opposition to [nonconsensual third-party] releases, relief is not thereby precluded under § 1507, which was intended to provide relief not otherwise available under the Bankruptcy Code or United States law."[135] Thus, it found that it could not deny the relief simply on the basis that third-party releases were not available in its jurisdiction.[136] Instead, the In re Vitro court only declined to enforce the plan in that case because of the role in the approval process of the votes of insiders holding intercompany claims.[137]

Simply put, if permitting third-party releases is a policy decision that Congress can and has made, it cannot also **[**39]** be true that enforcing such releases where principles of cooperation and comity so require in chapter 15 would be "manifestly contrary to the public policy of the United States." The simple fact that a U.S. court could not grant such releases in a typical chapter 11 plan does not make them manifestly contrary to U.S. public policy so as to require this Court to prohibit enforcement of the Release in this chapter 15 case. The DFC's public policy exception argument fails.

CONCLUSION

Accordingly, chapter 15 authorizes this Court to enforce nonconsensual third-party releases ordered by foreign courts. The plain language of Bankruptcy Code sections 1521(a) and 1507 give this Court a broad grant of discretion to aid foreign courts in accordance with principles of comity. Nothing in the plain language of these statutes or the legislative history or canons of construction indicates that Congress intended to diverge from this policy of comity to prohibit enforcing releases entered by foreign courts. The Mexican Prepack Proceeding was fair, and the Concurso Plan and the Concurso Order are not manifestly contrary to U.S. public policy. Therefore, this Court enforces the Concurso Plan and the Concurso Order in their entirety.

Dated: **[**40]** April 1, 2025

Wilmington, Delaware

/s/ Thomas M. Horan

Thomas M. Horan

United States Bankruptcy Judge

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omitted)); In re ABC Learning Ctrs., 728 F.3d at 311 (finding that although Australian insolvency law used a different prioritization scheme from U.S. bankruptcy law, recognizing and enforcing the Australian proceeding would not be manifestly contrary to U.S. public policy, and in fact, refusing to recognize and enforce it would allow claimants to circumvent the Australian courts and undermine U.S. public policies of ordered proceedings and equal treatment).

[135] In re Vitro, 701 F.3d at 1062.

[136] Id.

[137] Id. at 1067. Because the court decided that case on other grounds, it did not rule on whether third-party releases would be manifestly contrary to public policy under section 1506. Id. at 1069-70

United States Int'l Dev. Fin. Corp. v. Crédito Real S.A.B. de C.V., SOFOM, E.N.R. (In re Crédito Real S.A.B. de C.V., SOFOM, E.N.R.)

United States District Court for the District of Delaware

March 31, 2026, Decided; March 31, 2026, Filed

Chapter 11, Bankr. No. 25-10208 (TMH); Civ. No. 25-371 (CFC)

Reporter
2026 U.S. Dist. LEXIS 69149 *; 2026 LX 135973; 2026 WL 881444

IN RE CRÉDITO REAL S.A.B. DE C.V. SOFOM, E.N.R., Debtor in a Foreign Proceeding.UNITED STATES INTERNATIONAL DEVELOPMENT FINANCE CORPORATION, Appellant, v. CRÉDITO REAL S.A.B. DE C.V., SOFOM, E.N.R., et al., Appellees.

Prior History: *In re Crdito Real, S.A.B. de C.V., SOFOM, E.N.R., 670 B.R. 150, 2025 Bankr. LEXIS 751, 2025 WL 977967 (Apr. 1, 2025)*

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Judges: Colm F. Connolly, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: Colm F. Connolly

Opinion

March 31, 2026

Wilmington, Delaware

/s/ Colm F. Connolly

CHIEF JUDGE

I. INTRODUCTION

On February 7, 2025, Crédito Real, S.A.B. de C.V., SOFOM, E.N.R. (the "Chapter 15 Debtor"), a Mexican company, through its Foreign Representative, filed a Chapter 15 petition (A.1-72)[1] seeking, *inter alia*, (1) recognition of its insolvency proceeding (the "Concurso Proceeding") as a foreign main proceeding pursuant to *section 1517 of the Bankruptcy Code*; and (2) an order rendering assistance to the Mexican court, pursuant to *sections 1521(a)(7)* and *1507 of the Bankruptcy Code*, by recognizing and enforcing the Chapter 15 Debtor's plan (the "Concurso Plan"), which had been approved by the Mexican court overseeing the Concurso Proceeding, and which contained a provision releasing **[*2]** certain direct claims (including, for fraud and other intentional wrongdoing)

[1] The docket of the Chapter 15 case, captioned *In re Credit() Real, S.A.B. de C. V., SOFOM, E.N.R.*, No. 25-10208 (TMH) (Bankr. D. Del.) is cited herein as "Bankr. D.I. __." The appendix (D.I. 22) filed in support of DFC's opening brief (D.I. 21) is cited herein as "A. __," and the supplemental appendix (D.I. 25) filed in support of the answering brief of the Chapter 15 Debtor and the Foreign Representative (D.I. 24), is cited herein as "SA. __." The Technical Committee of the Irrevocable Trust of Administration and Source of Payment (the "Technical Committee"), also filed an answering brief *See* D.I. 23, 29.

held by third parties against certain non-debtors a provision often referred to as a nonconsensual third-party release.

Appellant, United States International Development Finance Corporation ("DFC"), an agency of the United States of America and claimant in the Concurso Proceeding, objected to the entry of an order granting full force and effect to the Concurso Plan based on the nonconsensual third-party release it contained. Relying on the Supreme Court's decision, *Harrington v. Purdue Pharma LP, 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024)*, DFC argued that the Bankruptcy Court lacked statutory authority to approve such a release under Chapter 15 and that the release was "manifestly contrary to the public policy" of the U.S. within the meaning of *§ 1506 of the Bankruptcy Code*.

On March 11, 2025, the Bankruptcy Court issued its *Order Granting (I) Recognition of Foreign Main Proceeding, (II) Full Force and Effect to Concurso Plan and Certain Related Relief (Bankr.* D.I. 51) (the "Enforcement Order"), overruling DFC's objection for the reasons set forth in its thorough opinion, *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R., 670 B.R. 150 (Bankr. D. Del. 2025)*.

On March 25, 2025, DFC filed a timely notice of appeal. D.I. 1. The appeal **[*3]** is fully briefed. D.I. 21, 23, 24, 26. I did not hear oral argument because the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. For the reasons set forth herein, **I** will affirm the Enforcement Order.

II. BACKGROUND

A. The Chapter 15 Debtor and the RSA

The factual background of this case is set forth in detail in the Opinion and appears undisputed. *See Crédito Real, 670 B.R. at 156-60*. The Chapter 15 Debtor was one of Mexico's largest non-bank financial lending institutions, with customers located predominantly in Mexico, elsewhere in Latin America, and in the United States. *Id. at 156*. In 2021, amid a liquidity crisis, the Chapter 15 Debtor began discussions with its key creditors on a restructuring. *Id.* These negotiations failed, and in June 2022, a shareholder of the Chapter 15 Debtor initiated a corporate liquidation proceeding in the 52nd Civil State Court of Mexico City, Mexico (the "Mexican Liquidation Proceeding"). (A.19-20.) Around the same time, certain members of an ad hoc group of unsecured creditors (the "Ad Hoc Group") filed an involuntary Chapter 11 petition in the Southern District of New York against the Chapter **[*4]** 15 Debtor (the "Involuntary Chapter 11 Case").[2] (A.19.) A related Chapter 15 case in support of the Mexican Liquidation Proceeding (the "Prior Chapter 15 Case")[3] was filed before the Bankruptcy Court. (A.19-20.)

Following years of litigation and months of negotiations, the Chapter 15 Debtor, the Ad Hoc Group, and other stakeholders reached an agreement and entered into a restructuring support agreement (the "RSA") to implement a global restructuring of the Chapter 15 Debtor's assets and liabilities. (A.23.) The RSA resolved several complex issues unique to the Chapter 15 Debtor's restructuring, including the Mexican Liquidation Proceeding, the Involuntary Chapter 11 Case, and the Prior Chapter 15 Case. (A.23.) The RSA provided that (i) the Chapter 15 Debtor and Ad Hoc Group would work to obtain the support of the

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[2] *See In re Crédito Real, S.A.B. de C. V., SOFOM, E.N.R.*, No. 22-10696 (TMH) (Bankr. D. Del. 2022).

[3] *See In re Crédito Real, S.A.B. de C. V., SOFOM, E.N.R.*, No. 22-10630 (TMH) (Bankr. D. Del. 2022).

majority of unsecured creditors and (ii) upon obtaining requisite support, the Debtor would commence a pre-packaged reorganization proceeding under *Ley de Concursos Mercantiles* ("Mexican Bankruptcy Law") in connection with an agreed Concurso Plan. (*Id.*) The RSA provided that the Debtor and Foreign Representative ultimately seek recognition and enforcement of the Concurso **[*5]** Plan in the U.S. under Chapter 15. (A.867-68.) It further provided that the Concurso Plan contain "customary releases and exculpation provisions," including of the Ad Hoc Group and certain of the Debtor's advisors, representatives, and stakeholders, in accordance with Mexican law. (A.868, A.915.)

On May 21, 2023, the Foreign Representative filed a status report in the Prior Chapter 15 Case and Involuntary Chapter 11 Case, notifying the Bankruptcy Court and parties in interest (including DFC) of the consensual resolution and global restructuring agreed under the RSA. (A.15.)

B. The Concurso Proceeding

In accordance with the RSA, on October 6, 2023, the Debtor filed the voluntary Concurso Proceeding in the 52nd Civil State Court of Mexico City (the "Mexican Court"). (A.24, A.32, A.91-92.) Under Mexican Bankruptcy Law, the Concurso Proceeding was subject to comprehensive creditor protections, including: (i) appointment of an independent examiner; (ii) a formal claims reconciliation process with objection rights; (iii) personal notification to all known creditors; (iv) public access to all proceedings and documents; (v) required creditor vote with 50% approval threshold; and oversight by **[*6]** Mexico's IFECOM (Federal Institute of Insolvency Specialists). (*See* A.77-A.89.)

The Mexican Court-appointed *conciliator* submitted the Concurso Plan to creditors on May 21, 2024 and later to the Mexican Court for approval. (A.24, A.94.) In accordance with the RSA, the Concurso Plan includes a release of claims against several parties that applies equally to all third-party creditors (the "Release"). (A.95, A.728, A.735.) The Release is customary in Mexican settlement agreements, such as the Concurso Plan, and is permitted under Mexican Bankruptcy Law. (SA.1110.) The Release provides:

> In any event, [the Chapter 15 Debtor] and the Recognized Créditors agree not to bring any action, complaint, suit or claim, as the case may be, against the Participating Recognized Créditors nor [the Chapter 15 Debtor], respectively, as well as their shareholders, its former general manager Felipe Guelfi Regules, liquidator, directors, officers, secretaries, depositaries and officers, and The Bank of New Mellon, as trustee for [the Chapter 15 Debtor]'s foreign-denominated bonds denominated in U.S. dollars, legal tender in the United States of America, and euros, legal tender in the European Union as the case **[*7]** may be, for any act or omission incurred by them during the Bankruptcy Proceeding and at any time prior to the execution of this Agreement, except for actions, complaints, claims or demands, as the case may be, for acts or omissions of [the Chapter 15 Debtor] that have caused damage or impairment to the Bankruptcy Estate and that they have failed to declare or disclose to the Participating Recognized Créditors during the negotiations of this Settlement Agreement and up to the date of its execution.

(A.728.)

The Concurso Plan provides for the repayment of creditors who are located in the U.S. *Crédito Real, 670 B.R. at 158*. It establishes the creation of a special purpose vehicle through a Mexican trust, to which almost all the Chapter

15 Debtor's remaining assets will be transferred. *Id.* Upon the monetization, sale, or assignment of such assets, the proceeds will be distributed according to the priority scheme set forth in the Mexican Bankruptcy Law, *pari passu* and *pro rata* among unsecured creditors, and unsecured claims will be cancelled or extinguished. *Id.*

The Concurso Plan was approved by the requisite majority of creditors and was confirmed by the Mexican Court upon entry of the Concurso Order. (A.94.) The Concurso **[*8]** Order reflects the Mexican Court's determination that the Concurso Plan complied with Mexican law, including "the requisites of opportunity, validity, legal basis, and form," and its holding that "neither the public interest nor the individual interest of any specific creditor is violated, since the terms agreed to will apply to all creditors equally . . . . " (A.735.)

C. DFC's Participation in the Concurso Proceeding

DFC participated in the Concurso Proceeding, including by filing a proof of claim and appealing the Mexican Court's ruling of its status as an unsecured creditor. (SA.1112.) DFC also objected to approval of the Concurso Plan on grounds unrelated to the Release. (*Id.*) The Mexican Court overruled DFC's objections to the Concurso Plan. (A.737, SA.1113.) On November 21, 2024, DFC appealed the Concurso Order, raising for the first time its argument that the Release violates Mexican Bankruptcy Law. (SA.1113.) The Chapter 15 Debtor and the Ad Hoc Group each filed a reply to DFC's appeal, defending the propriety of the Release. (SA.1114.) If DFC loses the appeal, it may still challenge, pursue other remedies and/or further appeal to the federal courts in Mexico. (*Id.*)

D. The Chapter [*9] 15 Case

On February 7, 2025, the Foreign Representative filed its petition seeking recognition of the Concurso Proceeding as a foreign main proceeding under *section 1517 of the Bankruptcy Code* and granting full force and effect within the U.S. to the Concurso Plan and the Concurso Order. (A.1-A.73.) DFC did not contest that the Concurso Proceeding satisfied the requirements for recognition under *section 1517(a)* as a "foreign main proceeding." (A.963, A.1051.) Upon such recognition, the Bankruptcy Code provides that the Bankruptcy Court "shall grant comity or cooperation to the [F]oreign [R]epresentative." *11 U.S.C. § 1509(b)(3)* (directing a court to grant comity if it has granted recognition under *section 1517* and subject to any limitations consistent with the policy of Chapter 15).

On February 28, 2025, DFC filed a limited objection to enforcement of the Concurso Plan and Concurso Order, arguing that the Release violated U.S. public policy following the Supreme Court's ruling in *Purdue*. (A.933-38.) DFC did not challenge the fairness or adequacy of the Concurso Proceeding, nor any other aspect of the Concurso Plan. (A.985.)

E. The Bankruptcy Court's Decision

Following briefing and oral argument held on March 11, 2025, the Bankruptcy Judge issued a bench ruling recognizing the **[*10]** Concurso Proceeding as the foreign main proceeding under Chapter 15, overruling DFC's objections, and granting recognition and enforcement of the Concurso Plan and Concurso Order. (A.1051-53.) On March 11, 2025, the Bankruptcy Court entered the Enforcement Order. (A.941.) On March 25, 2025, DFC filed its notice of appeal. (A.1055-59.)

On April 1, 2025, the Bankruptcy Judge issued

his Opinion in support of the Enforcement Order. The Bankruptcy Judge addressed each of DFC's arguments, finding that Chapter 15's broad grant of authority permits enforcement of foreign court orders containing nonconsensual third-party releases. *Crédito Real, 670 B.R. at 168-71*. The court found *Purdue* to be inapplicable because the Supreme Court limited its decision to Chapter 11's specific provisions, which have no bearing on Chapter 15's separate framework for international comity and cooperation with foreign courts in foreign insolvency proceedings. *See id* The Bankruptcy Court emphasized the procedural and fundamental fairness of the Concurso Proceeding and determined that creditor interests were sufficiently protected under *section 1522 of the Bankruptcy Code*. *See id. at 172*. Finally, the Bankruptcy Court determined that the Release was not "manifestly contrary" to U.S. public policy, **[*11]** emphasizing the narrow construction of this exception and the availability of nonconsensual third-party releases in *section 524(g) of the Bankruptcy Code*. *See id. at 171-72*.

III. JURISDICTION AND APPLICABLE STANDARDS

The Enforcement Order is a final order. *See In re ABC Learning Centres Ltd., 728 F.3d 301 (3d Cir. 2013)* (reviewing district court order affirming bankruptcy court order granting recognition as a foreign main proceeding). This Court has jurisdiction over the appeal pursuant to *28 U.S.C. § 158(a)*.

In undertaking a review of the issues on appeal, a district court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to its legal conclusions. *Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999)*. The bankruptcy court's discretionary rulings, including those regarding comity, are reviewed for abuse of discretion. *See, e.g., In re Nortel Networks, Inc., 669 F.3d 128, 137 (3d Cir. 2011)*; *Remington Rand Corp.-Del. v. Bus. Sys., Inc., 830 F.2d 1260, 1266 (3d Cir. 1987)*.

An abuse of discretion occurs when the court fails to apply the proper legal standard, fails to follow proper procedures in rendering the decision, or bases a decision upon findings of fact that are clearly erroneous. *Zolfo, Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 257 (3d Cir. 1995)*. "Clear error exists only if a finding is completely devoid of a credible evidentiary basis or bears no rational relationship to the supporting data." *Interfaith Cmty. Org. v. Honeywell Int'l, Inc., 399 F.3d 248, 254 (3d Cir. 2005)*. A court abuses its discretion where its decision was "arbitrary, fanciful or clearly unreasonable." *Democratic Nat'l Committee v. Republican National Comm., 673 F.3d 192, 201 (3d. Cir. 2012)*.

IV. ANALYSIS

Upon **[*12]** recognition of a foreign main proceeding, the Bankruptcy Court exercises broad discretion to grant enforcement of orders entered in the foreign main proceeding, consistent with the guiding principles of comity. *See 11 U.S.C. § 1501*. *Section 1521(a)* authorizes the court to grant "any appropriate relief' necessary to effectuate the purposes of Chapter 15, and *section 1507* independently authorizes "additional assistance," subject to specifically enumerated prohibitions, which do not include third-party releases. *11 U.S.C. §§ 1507(a)*, *1521(a)*. *Section 1507(b)*'s balancing test directs courts to consider the interests of creditors, the protection of assets, the treatment of stakeholders, and whether relief would be "consistent with the principles of comity." *11 U.S.C. § 1507(b)*. Here, the Bankruptcy Court determined that enforcement

of the Concurso Plan (including the Release) was proper under the broad authority granted by sections 1521(a) and 1507 of the Bankruptcy Code. *See* Crédito Real, 670 B.R. at 168-71.

DFC argues that the Bankruptcy Court erred in holding that it had the power to enforce a nonconsensual third-party release under Chapter 15. According to DFC, sections 1521(a)(7) and 1507(a) are "catch-all" provisions, and the Bankruptcy Court should have interpreted them in the same way that the Purdue court interpreted § 1123(b)(6). In DFC's view, "Nile Supreme Court's decision last year in Purdue provides **[*13]** a roadmap for interpreting broad, catch-all statutory language in the Bankruptcy Code, including the provisions of chapter 15 on which the Bankruptcy Court relied." *See* D.I. 21 at 22-37. DFC further argues that the court abused its discretion in enforcing the Concurso Plan as the Release is "manifestly contrary to the public policy" of the U.S. within the meaning of section 1506 of the Bankruptcy Code. *See id.* at 37-39.

A. Statutory Background

Chapter 15 includes a policy statement that confirms its "[p]urpose" and "objectives" and sets it apart from other chapters of the Bankruptcy Code. 11 U.S.C. § 1501(a). Chapter 15 incorporates the Model Law on Cross-Border Insolvency to promote: (i) cooperation between U.S. and foreign courts in cross-border insolvency cases; (ii) greater legal certainty for trade and investment; (iii) a fair and efficient administration of cross-border insolvencies that protects the interests of all stakeholders, including the debtor; (iv) the protection and maximization of the value of the debtor's assets; and (v) the facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. *Id.*

As Appellees point out, these objectives demonstrate Congress's intent for **[*14]** courts to interpret Chapter 15's provisions broadly to accommodate various legal systems and restructuring mechanisms. *See, e.g.,* In re SPhinX, Ltd., 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("[C]hapter 15 maintains—and in some respects enhances—the 'maximum flexibility,' that section 304 [which previously governed cases ancillary to foreign proceedings] provided bankruptcy courts . . . in light of principles of international comity and respect for the laws and judgments of other nations."). Section 1508 directs that courts interpreting Chapter 15 "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." 11 U.S.C. § 1508. "Particularly in the bankruptcy context, 'American courts have long recognized the need to extend comity to foreign bankruptcy proceedings,' because '[t]he equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in single proceeding; if all creditors could not be bound, a plan of reorganization would fail.'" In re Atlas Shipping A/S, 404 B.R. 726, 733 (Bankr. S.D.N.Y. 2009) (quoting Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B., 825 F.2d 709, 713-14 (2d Cir. 1985)).

Once a case is recognized as a foreign main proceeding, "Chapter 15 specifically contemplates that the court will exercise its discretion consistent with **[*15]** principles of comity." Id. at 738; 11 U.S.C. § 1521; *see also* 11 U.S.C. § 1509(b)(3) ("[A] court in the United States shall grant comity or cooperation to the foreign representative"). The importance of comity is expressed again in section 1507(b), which instructs that the provision of "additional relief' be "consistent with the principles of

comity . . ." 11 U.S.C. § 1507(b). The limitation on the court's broad discretion under Chapter 15 is set forth in section 1506, which provides that a court may decline to grant relief that is "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506.

B. The Bankruptcy Court Did Not Err in Declining to Apply *Purdue's* Construction of *Section 1123(b)(6)*

As an initial matter, DFC's overarching argument in this appeal is that the Bankruptcy Court should have interpreted sections 1521(a)(7) and 1507 in the same way that the Purdue court interpreted section 1123(b)(6) in the context of a Chapter 11 plan. But as the Bankruptcy Court held, "[n]either the plain language nor canons of statutory interpretation support DFC's arguments." Crédito Real, 670 B.R. at 165.

Purdue is, by the Supreme Court's express language, not applicable to this case as it addressed a statutory interpretation question applicable only to Chapter 11: "the Court holds ***only*** that the bankruptcy code does not authorize a [nonconsensual] release [of third-party claims **[*16]** against non-debtors] as part of a plan of reorganization under ***Chapter 11*** . . ." 603 U.S. at 206-07 (emphasis added).

DFC's assertion that Purdue "provides a roadmap" to interpret provisions in Chapter 15 fails to account for the fundamental structural and functional differences between Chapter 11 and Chapter 15. The catch-all provisions in Chapter 15 are part of a recognition and enforcement framework, drafted specifically to empower courts to assist foreign proceedings where appropriate. In Purdue, the Supreme Court addressed the narrow question of whether section 1123(b)(6) of the Bankruptcy Code, which permits a Chapter 11 plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title," authorized the inclusion of nonconsensual third-party releases. *See* Purdue, 603 U.S. at 214-19. *Purdue's* analysis turned on the principle of *ejusdem generis* and concluded that section 1123(b)(6) must be read in the context of its neighboring provisions, all of which concerned the debtor and its direct obligations. Id. at 217-19. The Supreme Court emphasized that this "catchall" provision was inherently constrained, meant only to clarify that Chapter 11 plans may include appropriate provisions that do not conflict with other Bankruptcy Code provisions, and that it did not empower **[*17]** courts to create new remedies or override other statutory limits. Id. at 218-21.

DCF has not pointed to anything in the text of Chapter 15 that is comparable to section 1123(b)(6)'s requirement that plan provisions not be "inconsistent with the applicable provisions of this title." That omission is telling. Courts do not presume that Congress inserts limiting clauses into one chapter and forgets to include them in another, particularly when those chapters serve different purposes. *See* Russello v. United States, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972)). Had Congress intended to condition Chapter 15 relief on the rules of Chapter 11, it would have so stated.

The omission of a limiting phrase implies a deliberate structural choice. Congress designed Chapter 15 to allow courts to flexibly assist foreign proceedings in ways tailored to their specific legal and factual contexts, not to replicate the exact structure of Chapter 11.

Thus, the Bankruptcy Court did not err in rejecting the effort to conflate these frameworks and holding that *Purdue* has **[*18]** no bearing on whether the Release may be recognized in a Chapter 15 case. *Crédito Real, 670 B.R. at 164*.

C. The Bankruptcy Court Did Not Err in Enforcing the Concurso Plan

The Bankruptcy Court further determined that enforcement of the Concurso Plan (including the Release) and Concurso Order was authorized under both *sections 1521(a)* and *1507*. *See id. at 169, 171*.

1. Enforcement Is Authorized by *Section 1521(a)*

Section 1521(a) of the Bankruptcy Code authorizes the Bankruptcy Court to "grant any appropriate relief," provided that the "interests of the creditors and other interested entities, including the debtor, are sufficiently protected." *11 U.S.C. §§ 1521(a)*, *1522*. "The discretion that is granted [under *section 1521(a)*] is 'exceedingly broad' since a court may grant 'any appropriate relief' that would further the purposes of chapter 15 and protect the debtor's assets and the interests of creditors." *In re Odebrecht Engenharia e Construe& S.A., 669 B.R. 457, 465 (Banks. S.D.N.Y. 2025)* (quoting *In re Atlas Shipping, 404 B.R. at 739*). Such inquiry focuses on, among other things, whether there is a "full and fair trial . . . before a court of competent jurisdiction [that was] conduct[ed] upon regular proceedings . . . and under a system of jurisprudence likely to secure an impartial administration of justice . . . and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting." *Hilton v. Guyot, 159 U.S. 113, 202-03, 16 S. Ct. 139, 40 L. Ed. 95 (1895)*; *see also In re Avanti Commc'ns. Grp. PLC, 582 B.R. 603, 616 (Bankr. S.D.N.Y. 2018)*.

DFC argues **[*19]** that *section 1521(a)* does not authorize third-party releases because they are "not specifically enumerated" and it says the Bankruptcy Court's reliance on *section 1521(a)(7)* was misplaced. D.I. 21 at 21. But *section 1521(a)* allows the court to grant "any appropriate relief' to a Chapter 15 debtor in order to preserve the value of the debtor's assets and facilitate the administration of the foreign proceeding. As the Bankruptcy Court found, this provision explicitly grants broad judicial discretion, including the ability to enforce the terms of a foreign restructuring plan. *See Crédito Real, 670 B.R. at 161-62*.

DFC also misreads *section 1521(a)(7)*, which authorizes courts to grant "any additional relief that may be available to a trustee," subject only to specific exclusions not applicable here.[4] DFC argues that because nonconsensual third-party releases are no longer available in domestic Chapter 11 cases *post-Purdue*, such relief must also be barred under Chapter 15. *See* D.I. 21 at 24-27; D.I. 26 at 6-7. But as courts have recognized, the term "trustee" in *section 1521(a)(7)* refers not to the identity of the actor, but to the nature of the relief available in U.S. bankruptcy proceedings. *See In re Irish Bank Resol. Corp. Ltd. (in Special Liquidation), 559 B.R. 627, 642-43 (Bankr. D. Del. 2016)*. *Section 1521(a)(7)* merely expands the court's authority to include forms of relief typical in domestic cases, so long as they **[*20]** are "appropriate" in the Chapter 15 context. It does not impose a requirement that the relief be presently available under Chapter 11, nor does it prohibit foreign representatives from seeking

[4] *Section 1521(a)(7)* states that the relief available under *sections 522*, *544*, *545*, *547*, *548*, *550*, and *724(a)* is not available to the foreign representative. These sections are not applicable here.

such relief.

DFC's focus on the unavailability of third-party releases under Chapter 11 also ignores the broader language of section 1521(a), which expressly permits "any appropriate relief' necessary to effectuate the objectives of Chapter 15. When read together, sections 1521(a) and 1521(a)(7) grant courts broad discretion to approve relief that protects debtor assets and creditor interests, unless explicitly excluded, and third-party releases are not among those exclusions.

DFC further argues that the Bankruptcy Court ignored section 1522(a)'s requirement that discretionary relief under section 1521 may be granted "only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). But the Opinion considered the procedural and fundamental fairness of the Concurso Proceeding, including the notice and opportunity to be heard afforded to creditors (including DFC), and the arms-length nature of the negotiations leading to the Concurso Plan, concluding that creditor interests were sufficiently protected. *See* ***[*21]*** Crédito Real, 670 B.R. at 156-58 (outlining Concurso Proceeding) and 169 (finding that it "provided all the protections set out in Section 1507(b)").

In sum, by authorizing "any appropriate relief," section 1521 empowers courts to facilitate outcomes in foreign proceedings that promote fairness, comity, and the efficient resolution of cross-border insolvencies. The Bankruptcy Court's decision that the Release could be enforced under section 1521(a) is supported by the text and purpose of Chapter 15.

2. Enforcement Is Authorized by *Section 1507*

Section 1507(a) states that "if recognition is granted, [the court] may provide additional assistance to a foreign representative under this title or under other laws of the United States." 11 U.S.C. § 1507(a). DFC argues the Bankruptcy Court erred because, "[u]nder Purdue, non-consensual third-party releases are not available under the Bankruptcy Code or other laws of the United States." D.I. 21 at 33. Section 1507(a), however, reflects Congress's intent to grant bankruptcy courts broad discretion to recognize and assist foreign proceedings, even when the relief exceeds what is typically available under Chapter 11, so long as basic principles of comity, fairness, and U.S. public policy are respected. *See* In re Metcalfe & Mansfield Alternative Invs., 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010) (explaining that enforcement of relief in a foreign plan does not require identical **[*22]** relief to be available in the U.S.); *see also* In re OAS, S.A., 533. B.R. 83, 104 (Bankr. S.D.N.Y. 2015) (quotations omitted) (indicating that "even the absence of certain procedural or constitutional rights will not itself be a bar"). By using the permissive phrase "may provide additional assistance," section 1507(a) signals Congress's intent to accommodate the unique demands of cross-border restructurings, rather than constrain them within the narrower confines of purely domestic provisions.

In determining whether to grant such additional assistance, section 1507(b) instructs courts to be consistent with the principles of comity and to consider: whether there has been fair process in the foreign proceedings; if claim holders are receiving due process; whether there is any preferential or fraudulent transfer at issue; if the distribution substantially aligns with the Bankruptcy Code's order of priorities; and whether, in appropriate cases, individuals can receive a "fresh start." 11 U.S.C. § 1507(b). Courts have interpreted this inquiry to focus on whether there is a "full and fair trial . . . before a court of competent jurisdiction []

[that was] conduct[ed] . . . under a system of jurisprudence likely to secure an impartial administration of justice . . . and there is nothing to show **[*23]** either prejudice in the court, or in the system of laws under which it [presides]." *In re Avanti Commc'ns Grp. PLC, 582 B.R. 603, 616 (Bankr. S.D.N.Y 2018)* (quoting *Hilton, 159 U.S. at 202-03*).

The Bankruptcy Court did not clearly err in finding that the Concurso Proceeding included these hallmarks of procedural fairness and did not violate *section 1507(b)*. *Crédito Real, 670 B.R. at 169*. The Bankruptcy Court carefully reviewed the record and found that the Concurso Proceeding provided DFC and other creditors with notice, an opportunity to be heard, and meaningful judicial review. *See id.* The process was court-supervised, publicly noticed, and included rights of appeal that DFC has in fact exercised. The Mexican Court only approved the Release in a collective proceeding after notice and a hearing. The Release was the result of negotiations among Credit() Real and its creditors in the Concurso Proceeding and was approved by the Mexican Court after a hearing set on five-business-days' notice to all parties in interest to present their objections and opportunity to appeal the Concurso Order.

DFC argues that this application of comity is optional, claiming that "a bankruptcy court can fully satisfy its statutory duty of comity without providing any discretionary relief requested under *Sections 1507* or *1521*." D.I. 21 at 35. But while courts are **[*24]** not obligated to grant every request made by a foreign representative, they are required to weigh whether recognition and enforcement of foreign relief advances the cooperative and efficiency-based goals of Chapter 15. Comity is a guiding statutory principle. *See In re ABC Learning, 728 F.3d at 308* (explaining that Chapter 15 was enacted to provide effective mechanisms for dealing with cases of cross-border insolvency, emphasizing cooperation between U.S. courts and foreign courts, and fostering comity and predictability in international insolvency proceedings). Accepting DFC's argument and refusing to recognize customary foreign restructuring tools like the Release, absent any fundamental conflict with U.S. policy, would frustrate the statutory purpose of Chapter 15 and render *section 1507* meaningless.

Thus, the Bankruptcy Court did not err in holding that *section 1507(a)* authorizes enforcement of third-party releases where the relief aligns with the principles of comity, fairness, and U.S. public policy. Nor did it abuse its discretion in extending comity to the Mexican Court's judgment, which it found to be the product of a procedurally sound, transparent, and equitable restructuring process. DFC has provided no basis to determine that finding **[*25]** was clearly erroneous.

D. The Bankruptcy Court Did Not Err in Determining that the Release Is Not Manifestly Contrary to the Public Policy of the United States

To ensure that Chapter 15 is not used to grant relief beyond appropriate bounds, Congress included a safeguard in *section 1506* which provides that the court may "refus[e] to take an action governed by [Chapter 15] if the action would be manifestly contrary to the public policy of the United States." *11 U.S.C. § 1506*. *Section 1506*'s public policy exception provides a narrow remedy for genuine threats to core U.S. constitutional or statutory rights, as opposed to mere discrepancies between domestic and foreign law. The public policy exception applies only when actions offend "the most fundamental policies of the United States" and is "invoked only 'under exceptional circumstances concerning matters of

fundamental importance for the [United States]." *Morning Mist. Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 139 (2d Cir. 2013)* (quoting H.R. Rep. No. 109-31, pt. 1, at 109 (2005)); *In re Qimonda AG Bankr. Litig., 433 B.R. 547, 570 (E.D. Va. 2010)* ("The mere fact of conflict between foreign law and U.S. law, absent other considerations, is insufficient to support the invocation of the public policy exception."); *In re PT Bakrie Telecom Tbk, 628 B.R. 859, 890-91 (Bankr. S.D.N.Y. 2021)* (stressing public policy exception, employing term "manifestly," must be read narrowly and concluding **[*26]** nonconsensual third-party releases did not fall within exception).

The Bankruptcy Court did not err in finding that the Release did not meet that high bar. As noted, the relief granted in a foreign proceeding does not need to be identical to what might be available in the U.S., and courts in this circuit have held that the public policy exception of *section 1506* only applies "'where the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections' or where recognition 'would impinge severely a US constitutional or statutory right.'" *In re ABC Learning, 728 F.3d at 309* (quoting *In re Qimonda AG, 433 B.R. at 570*). DFC insists that the Release violates public policy, arguing that "Nile public policy of the United States strongly disfavors the release of liability in cases involving intentional wrongdoing, fraud, bad faith, and similar serious misconduct," and citing *In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2d Cir. 2005)* in support. *See* D.I. 21 at 38. But *Metromedia*, which involved a Chapter 11 case, is inapplicable in this Chapter 15 case, where there have been no findings of wrongdoing, fraud, bad faith, or serious misconduct in the case by the Mexican Court. The Bankruptcy Court did not abuse its discretion in granting comity to the Mexican Court in this respect.

Moreover, **[*27]** as Appellees points out, *Purdue* did not establish that nonconsensual third-party releases violate U.S. public policy. The Supreme Court's analysis focused on statutory interpretation under provisions of Chapter 11, rather than public policy considerations, and it held that although nonconsensual third-party releases are not permitted under Chapter 11—except under *section 524(g)* in the context of asbestos cases—Congress may authorize them. *See Purdue, 603 U.S. at 226*. The Supreme Court's acknowledgment of the policy arguments supporting such releases undermines DFC's claim they are manifestly contrary to fundamental U.S. policy.

V. CONCLUSION

It is well settled that U.S. bankruptcy courts can give effect to foreign orders in recognized foreign proceedings pursuant to the authority granted in Chapter 15, even when those orders contain relief unavailable under U.S. law. DFC's arguments misconstrue the Supreme Court's narrow holding in *Purdue*, applicable in Chapter 11 cases, as well as the statutory framework of Chapter 15 and its core policy objectives. Accordingly, I will affirm the Enforcement Order.

The Court will issue a separate Order consistent with this Opinion.

ORDER

For the reasons set forth in the accompanying Opinion, it is hereby **[*28]** ORDERED:

1. The Bankruptcy Court's *Order Granting (I) Recognition of Foreign Main Proceeding, (II) Full Force and Effect to Concurso Plan and Certain Related Relief (Bankr.* D.I. 51) (the "Enforcement Order") is AFFIRMED.

2. The Clerk of the Court is directed to CLOSE Civ. No. 25-371-CFC.

Entered this Thirty-first Day of March, 2026.

/s/ Colm F. Connolly

CHIEF JUDGE

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In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial

United States Bankruptcy Court for the Southern District of New York

April 21, 2025, Decided

Case No. 25-10482 (MG), Chapter 15

Reporter
669 B.R. 457 *; 2025 Bankr. LEXIS 990 **; 2025 LX 213283

In re: Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial, et al., Debtors in a Foreign Proceeding.

Counsel: [1]** For the Foreign Representative of Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial and affiliated debtors: Luke A. Barefoot, Esq., Thomas S. Kessler, Esq., CLEARY GOTTLIEB STEEN & HAMILTON LLP, New York, New York.

Greg M. Zipes, Esq., WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2, Alexander Hamilton Custom House, New York, NY.

Judges: MARTIN GLENN, Chief United States Bankruptcy Judge.

Opinion by: MARTIN GLENN

Opinion

[*461] MEMORANDUM OPINION GRANTING MOTION FOR RECOGNITION OF FOREIGN MAIN PROCEEDINGS AND OVERRULING UST OBJECTIONS

MARTIN GLENN

CHIEF UNITED STATES BANKRUPTCY JUDGE

This Court has already entered an order ("Order," ECF Doc. 21) granting all the relief requested by the foreign representative (Adriana Henry Meirelles, or "Foreign Representative") of the above-captioned foreign debtors ("Debtors"): recognizing the Debtors' Brazilian *recuperação judicial* ("RJ") proceeding as the Debtors' foreign main proceeding, recognizing the full force and effect of the subsequent RJ plan ("RJ Plan"), giving full force and effect to the related Brazilian court confirmation order, and providing further relief which this Court deemed just and proper. No party objected to the recognition of the Brazilian **[**2]** RJ proceeding as the foreign main proceeding, nor to the recognition and enforcement of the RJ Plan in the United States. The only objection was filed by the United States Trustee ("UST"), which objected to language in the Debtors' proposed order[1] which provided additional relief. ("Objection," ECF Doc. # 16.) The Foreign Representative filed a reply ("Reply," ECF Doc. # 18).

The Court entered the Debtors' final proposed order without further modifications. **[*462]** The Court now writes separately to address two of the UST's objections, both of which were overruled at the hearing, to provide further clarification, as the UST has made similar objections in multiple Chapter 15 cases.

[1] The proposed order was edited twice, but the language to which the UST objected remained the same throughout. This opinion therefore relies on the language in the order ultimately entered, *see* ECF Doc. # 21.

I. BACKGROUND

A. Company Structure and History

The Debtors, along with certain other related entities and affiliates (the "OEC Group"), are part of the business division of Novonor S.A. - Em Recuperação Judicial ("Novonor") and its related entities and affiliates (the "Novonor Group"), one of the largest private business groups in Brazil today, with businesses in engineering, construction and in the development and operation of infrastructure. (ECF Doc. # 2 at 3.) The OEC Group is one of the largest construction companies **[**3]** in the world and employs over 17,000 people. (*Id.* at 10.) The OEC Group's operational and economic activities are primarily concentrated in Brazil. (*Id.* at 12.) The Foreign Representative's motion seeking recognition and enforcement of the RJ Plan provides additional details on each of the Debtors and on the OEC Group as a whole. (*See generally id.*)

The Debtors or their affiliates have filed two previous Chapter 15 proceedings. On August 26, 2019, Novonor (formerly known as Odebrecht S.A.) and certain affiliates (the "Novonor Debtors") filed a petition ("Novonor Petition") seeking recognition of the jointly administered judicial reorganization proceeding pending at the time before a Brazilian court. (*Id.* at 3 n.3.) On September 18, 2019, this Court entered an order granting the relief sought in the Novonor Petition and recognizing the Brazilian RJ proceeding as a foreign main proceeding for all the Novonor Debtors. (*Id.*) A bit over a year later, on November 24, 2020, a subset of three of the Debtors sought recognition of an extrajudicial reorganization (*recuperação extrajudicial*, or "EJ") and enforcement of an agreed plan of reorganization ("EJ Plan") which had been approved by the **[**4]** First Bankruptcy and Judicial Recovery Court of the District of the Capital of the State of São Paulo. (*Id.* at 3-4.) The aim of the Brazilian EJ Proceeding was to optimize the OEC Group's capital structure and provide additional runway for the OEC Group to reach an environment favorable to the resumption of its growth. (*Id.*) The EJ Plan only involved the obligations of a subset of the current set of Debtors and resulted in the replacement of certain New York law-governed notes with new notes, enabling a restructuring of a financial liability exceeding $3.1 billion. (*Id.* at 4-5.)

Due to the pressures of the pandemic, a financial crisis in Brazil, a reduction in infrastructure investments, and lower demand for infrastructure projects in countries where the OEC Group operates, a broader restructuring became necessary. (*Id.* at 5.) In June 2024, the Debtors filed the Brazilian RJ Proceeding to implement a comprehensive restructuring of the OEC Group's liabilities to ensure the preservation and continuation of its business through an agreed plan of reorganization (the RJ Plan). In broad strokes, the RJ Plan involves (i) a restructuring of the OEC Group's existing capital structure both to **[**5]** satisfy the OEC Group's existing debt and strengthen its cash flow; (ii) the creation of a new business unit, with a healthy capital structure and high technical capacity; and (iii) an injection of liquidity to finance future projects through a minimum $120 million debtor-in-possession financing facility, subject to certain conditions precedent being met. (*Id.* at 6.) After two rounds of voting, the ultimate result was a resounding vote in favor of the RJ Plan by the creditor classes and claimants **[*463]** present to vote, and after resolving certain objections and finding that the requisite amount of creditor support and all other legal requirements were met, the Brazilian court issued an order confirming the RJ Plan (the "Brazilian Confirmation Order") on March 7, 2025. (*Id.* at 26-28.)

On March 14, 2025, the Foreign Representative filed in this Court a motion for recognition and enforcement, along with a proposed order and a copy of the RJ Plan. (ECF Doc. # 2.) The proposed order was modified before becoming the ultimate Order, but the relevant provisions, excerpted below, did not change. The United States Trustee objected to portions of the proposed order, as discussed below.

B. Terms of RJ [6] Plan**

The only term of the RJ Plan that matters for the following discussion can be found at clause 11.5 of the RJ Plan:

> 11.5. Settlement. The fulfillment of the payment obligations in accordance with the terms and conditions established in this Plan will entail, automatically and regardless of any additional, broad, general and unrestricted formality, the discharge of all Bankruptcy Credits against the Companies under Reorganization and their officers, directors, agents, employees and representatives.

(Objection at 5 (citing RJ Plan).) All parties agreed during the recognition hearing that this provision does not constitute a nonconsensual third-party release.

C. UST Objection

The UST objected to portions of the proposed order granting recognition (but *not* to the recognition of the Brazilian RJ proceeding or to the enforcement of the RJ Plan as written). The Court overruled the UST's objections. However, two of the UST's objections merit further discussion, as they have recurred throughout multiple Chapter 15 cases.

First, the UST argued that the following limitation on liability is inappropriate because it is a "veiled exculpation clause," it goes beyond the relief granted by the Brazilian **[**7]** court, and there is no statutory basis for granting the limitation:

> The Directed Parties[2] and their respective officers, directors, employees, representatives, advisors, attorneys, professionals and managers, in each case, solely in their respective capacities as a Directed Party, shall be entitled to a full limitation of liability from and shall have no liability for any and all claims, obligations, suits, judgments, damages, rights, causes of action, liabilities from, or in connection with, any action or inaction taken in furtherance of and/or in accordance with this Order, these Chapter 15 Cases, the Brazilian RJ Proceeding, the Brazilian Confirmation Order and the RJ Plan, except for any liability arising from any action or inaction constituting gross negligence, fraud, willful misconduct or professional malpractice as determined by this Court.

(Order ¶ 7; Objection at 11.) Assuming *arguendo* that the limitation on liability is appropriate, the UST also objected on the grounds that the limitation "lacks the hallmarks of an acceptable exculpation provision in a chapter 11 proceeding": there is **[*464]** no temporal limitation, and the clause creates "prospective immunity by exculpation." (Objection **[**8]** at 13-14.) Furthermore, the UST argued, the exculpation applies to too many parties—it applies to anyone in connection with "any action or inaction taken in

[2] The "Directed Parties" are: (i) The Bank of New York Mellon, as the indenture trustee (the "Indenture Trustee") under the indentures related to the 2024 Notes, the 2026 Notes, the 2027 Notes, the 2029 Notes, the 2033 Notes, the 2046 Notes, and the Perpetual Notes (collectively, the "NY Notes"); (ii) the Depository Trust Company ("DTC"), Euroclear Bank S.A./N.V., and/or Clearstream Banking, Société Anonyme, as clearing systems, as applicable; (iii) Epiq Corporate Restructuring LLC; and (iv) the custodians of the NY Notes. (Order ¶ 5 n.3.)

furtherance of and/or in accordance with this Order, this Chapter 15 Case, the Brazilian RJ Proceeding, the Brazilian Confirmation Order and the RJ Plan," so the exact parties to whom the exculpation applies are not known, and it also covers non-estate fiduciaries. (*Id* at 15.) (The UST also objected to the absence of a carveout for bad faith, breach of fiduciary duty, and legal malpractice, all of which are required by the New York Rules of Professional Conduct; the Order was amended to include a carveout for malpractice claims.) Second, the UST argued that the proposed order created impermissible nonconsensual third-party releases. As compared to the release of the debtors contemplated by the RJ Plan (cited above, Section 11.5 of the RJ Plan), the order provides as follows:

> Except as provided in paragraph 12 of this Order, all persons and entities are permanently enjoined and restrained from (i) commencing or taking any action or asserting any claim, within the territorial jurisdiction of the United States, that is inconsistent **[**9]** with, in contravention with, or would interfere with or impede the administration, implementation and/or consummation of the RJ Plan, the Brazilian Confirmation Order or the terms of this Order; and (ii) taking any action against the Debtors or their property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are extinguished, novated, cancelled, discharged or released under the RJ Plan and the Brazilian Confirmation Order. No action may be taken within the territorial jurisdiction of the United States to confirm or enforce any award or judgment that would otherwise be in violation of this Order without first obtaining leave of this Court.

(Order ¶ 11.) The UST took the position that (1) this language creates "an expansive third-party release" because it "enjoins *all persons and entities* from *taking any action*." (Objection at 16-17.) The UST argued that section 1521(a) of the Code does not provide courts with a statutory basis for issuing orders which contain third-party releases: applying the canon of *ejusdem generis* as the Supreme Court did in Harrington v. Purdue Pharma, 603 U.S. 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024) (henceforth "Purdue"), the UST claimed that third-party releases are "not similar in nature to the relief **[**10]** provided in section 1521(a)" because third-party releases are not designed to protect a debtor (unlike the provisions of section 1521(a)), so cannot fit under that subsection of the Code. (Objection at 17-18.) The UST also argued that the release supposedly created by the above section of the Order does not fall within the category of "appropriate relief" under section 1521(a) of the Code because "third-party releases may not be imposed without consent through a bankruptcy plan under United States law," citing Purdue. (*Id.* at 18.)

D. Foreign Representative's Reply

The Foreign Representative's reply can be summarized as follows. First, the language of the order limiting liability is customary and similar to language this Court approved in other chapter 15 cases. (Reply at 4-5.) Second, the provision in Section 11.5 of the RJ Plan is proper under both Brazilian and U.S. law, as it does not create a third-party release. (*Id.* at 5-6.) The Foreign Representative then argued that the UST misread the language of the proposed confirmation order, as it does not **[*465]** create a wide-reaching release but rather bars only those "actions that contravene relief set forth in the RJ Plan and Brazilian Confirmation Order" —i.e., the order sought only "enforcement **[**11]** of the relief granted in the Brazilian RJ Proceeding within the territorial jurisdiction of the United States and

nothing more." (*Id.* at 6.) Even if Section 11.5 of the RJ Plan did create nonconsensual third-party releases, however, the Foreign Representative maintained that enforcement of such a provision is acceptable because *Purdue* does not apply in Chapter 15 cases. (*Id.* at 7-9.)

II. LEGAL STANDARD

A. Relief in a Chapter 15 Proceeding

In 2005, Congress adopted Chapter 15 of the Bankruptcy Code based on the Model Law on Cross-Border Insolvency proposed by the United Nations Commission on International Trade Law in 1997. Chapter 15 replaced *section 304 of the Bankruptcy Code*, which originally provided the statutory framework for cases filed in the United States that are ancillary to insolvency proceedings filed in foreign countries. *Section 304* provided a bankruptcy court with broad discretion in fashioning an appropriate remedy in a particular case. While Chapter 15 replaced *section 304*, many of the principles underlying *section 304* remain in effect under chapter 15, including the principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief. *In re SPhinX, Ltd., 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006)* ("[C]hapter 15 maintains—and **[**12]** in some respects enhances—the 'maximum flexibility,' that *section 304* provided bankruptcy courts . . . in light of principles of international comity and respect for the laws and judgments of other nations." (internal citation omitted)).

Section 1520 outlines the mandatory relief automatically granted upon recognition of a foreign main proceeding under Chapter 15. The relief available under this provision is not at issue in this case. Rather, it is the relief available to the foreign representative at the Court's discretion under *sections 1521* and *1507* of the Code which are relevant.

"*Section 1521(a)* outlines the discretionary relief a court may order upon recognition of a foreign proceeding, whether main or non-main . . . . The discretion that is granted is 'exceedingly broad' since a court may grant 'any appropriate relief' that would further the purposes of chapter 15 and protect the debtor's assets and the interests of creditors." *In re Atlas Shipping A/S, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009)* (internal citation omitted). *Section 1521(a)* reads as follows:

> (a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, **[**13]** grant any appropriate relief, including—
>
> (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under *section 1520(a)*;
>
> (2) staying execution against the debtor's assets to the extent it has not been stayed under *section 1520(a)*;
>
> (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under *section 1520(a)*;
>
> (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning **[*466]** the debtor's assets, affairs, rights, obligations or liabilities;

> (5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
>
> (6) extending relief granted under section 1519(a); and
>
> (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a). To determine what relief could fall under the catch-all at the beginning of the subsection ("additional relief"), courts look to relief **[**14]** available under the now-deleted section 304 of the Code. Courts give varying weight to section 304 precedent. *See* In re Vitro S.A.B. de CV, 701 F.3d 1031, 1057 (5th Cir. 2012) (holding that relief available under section 1521(a) is "co-extensive" with that available under section 304); *compare* In re Cozumel Caribe, S.A. de C.V., 482 B.R. 96, 114 (Bankr. S.D.N.Y. 2012) (viewing section 304 caselaw as providing "useful precedents"). Relief under section 1521 will be granted only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected. 11 U.S.C. § 1522(a).

Section 1507 provides additional discretionary grounds for the Court to grant relief to the foreign representative. Section 1507 reads:

> (a) Subject to the specific limitations stated elsewhere in this chapter the court, if re cognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.
>
> (b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—
>
> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign **[**15]** proceeding;
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor;
>
> (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
>
> (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507.

Section 1506 provides that a bankruptcy court may decline to grant relief requested in a chapter 15 case if the action would be "manifestly contrary to the public policy of the United States." 11 U.S.C. §§ 1506. This public policy exception is narrowly construed. *See* In re Ocean Rig UDW Inc., 570 B.R. 687, 707 (Bankr. S.D.N.Y. 2017); *see also* In re Toft, 453 B.R. 186, 195 (Bankr. S.D.N.Y. 2011) ("[T]hose courts that have considered the public policy exception codified in [section] 1506 have uniformly read it narrowly and applied it sparingly.").

B. Exculpations in Chapter 11s

"Exculpation provisions are designed to 'insulate court-supervised fiduciaries and some other parties from claims that are based on actions that relate to the restructuring.'" *In re Genesis **[*467]** Glob. HoldCo, LLC, 660 B.R. 439, 527 (Bankr. S.D.N.Y. 2024)* (quoting *In re Aegean Marine Petroleum Network Inc., 599 B.R. 717, 720 (Bankr. S.D.N.Y. 2019)*). "It is well settled that an exculpation clause approved at confirmation may exculpate estate fiduciaries like a committee, its members, and estate professionals for their actions in the bankruptcy case except where those actions amount to willful **[**16]** misconduct or gross negligence." *In re LATAM Airlines Grp. S.A., No. 20-11254 (JLG), 2022 Bankr. LEXIS 1725, 2022 WL 2206829, at *50 (Bankr. S.D.N.Y. June 18, 2022)* (citations omitted). Such provisions in chapter 11 plans are "not uncommon" and are generally permissible "so long as they are properly limited and not overly broad." *2022 Bankr. LEXIS 1725, [WL] at *49* (quoting *In re Nat'l Heritage Found., Inc., 478 B.R. 216, 233 (Bankr. E.D. Va. 2012)*).

Generally, it has been recognized that:

> [A] proper exculpation provision is a protection not only of court-supervised fiduciaries, but also of court-supervised and court-approved transactions. If this Court has approved a transaction as being in the best interests of the estate and has authorized the transaction to proceed, then the parties to those transactions should not be subject to claims that effectively seek to undermine or second-guess this Court's determinations. In the absence of gross negligence or intentional wrongdoing, parties should not be liable for doing things that the Court authorized them to do and that the Court decided were reasonable things to do.

Aegean Marine Petroleum Network, 599 B.R. at 721.

In the Chapter 11 context, "in general, exculpated parties who are not estate fiduciaries are entitled to benefit from a broad exculpation provision where they have been actively involved in all aspects of the Chapter 11 Cases and have made significant contributions to the success of the cases." *In re Wythe Berry Fee Owner LLC, No. 22-11340 (MG), 2024 Bankr. LEXIS 1254, 2024 WL 2767121, at *13 (Bankr. S.D.N.Y. May 29, 2024)* (cleaned up). **[**17]** This Court in *Wythe Berry* exculpated a creditor group, among others, because its participation "was instrumental to the Debtor formulating a plan on an expedited basis, and their support was essential to the successful negotiation of the Plan" and related agreements. *Id.* (cleaned up). And while the exculpation reached beyond the set of estate fiduciaries, it still was limited just to "court-supervised and court-approved transactions." *Aegean Marine Petroleum Network, 599 B.R. at 721*. *See also In re Residential Cap. LLC, Case No. 12-12020 (MG), 2013 Bankr. LEXIS 5683, 2013 WL 12161584, at *13 (Bankr. S.D.N.Y. Dec. 11, 2013)* (order confirming plan contained exculpations for parties "instrumental to the successful prosecution of the Chapter 11 Cases or their resolution pursuant to the Plan, and/or provided a substantial contribution to the Debtors"); *KG Winddown, LLC, et al., Case No. 20-11723 (MG), 620 B.R. 469 (Bankr. S.D.N.Y. 2020) (ECF Doc. # 494)* (permitting exculpation of purchaser as non-estate fiduciary); *Genco Shipping & Trading Ltd., Case No. 14-11108 (SHL), 513 B.R. 233 (Bankr. S.D.N.Y. July 2, 2014)* (ECF Doc. # 322) (approving exculpation provision in plan providing exculpation for non-estate fiduciaries). "In determining whether to approve exculpation provisions, courts also consider whether the beneficiaries of the exculpation participated in good faith in negotiating the plan and bringing it to fruition, and whether the provision is integral to the

plan . . . . Courts in this and other districts have approved exculpation provisions . . . for estate **[**18]** fiduciaries and non-estate fiduciaries." *In re: Klaynberg, No. 22-10165 (MG), 2023 Bankr. LEXIS 2055, 2023 WL 5426748, at **[*468]** *17-18 (Bankr. S.D.N.Y. Aug. 22, 2023)*. Finally, courts in the Second Circuit allow exculpation provisions so long as they apply to post-petition conduct and explicitly exclude gross negligence and willful misconduct. *Id.* ("Courts in the Second Circuit have held that [exculpation provisions] . . . are appropriate when confined to postpetition activity and explicitly exclude gross negligence and willful misconduct."). *But see In re PTL Holdings LLC, No. 11-12676 BLS, 2011 Bankr. LEXIS 4436, 2011 WL 5509031, at *12 (Bankr. D. Del. Nov. 10, 2011)* (sustaining UST's objection to exculpation of non-estate fiduciaries and limiting exculpation clause to just estate fiduciaries).

Additionally, courts in this district have exculpated behavior that occurred after the effective date of a plan of reorganization when that behavior was "authorized by bankruptcy courts to carry out the bankruptcy process." *See In re Ditech Holding Corp., No. 19-10412 (JLG), 2021 Bankr. LEXIS 2274, 2021 WL 3716398, at *9 (Bankr. S.D.N.Y. Aug. 20, 2021)* ("It is settled that exculpatory provisions are proper to protect those authorized by bankruptcy courts to carry out the bankruptcy process, even after the effective date of a plan . . . . The Exculpation Provision expressly covers acts falling under the 'administration of the Plan'—which by definition occurs post-Effective Date . . . . [T]he Exculpation Provision in Section 10.7 of the Plan applies to shield **[**19]** the conduct of these Individual Defendants [in implementing the plan] from collateral attack in a separate lawsuit."); *In re Aegean Marine Petroleum Network Inc., 599 B.R. at 720* ("I think that a proper exculpation provision is a protection not only of court-supervised fiduciaries, but also of court supervised and court-approved transactions . . . . In the absence of gross negligence or intentional wrongdoing, parties should not be liable for doing things that the Court authorized them to do and that the Court decided were reasonable things to do."); *In re Granite Broad. Corp., 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007)* (approving exculpation clause "for actions in connection, related to, or arising out of the Reorganization Cases," noting that the language "generally follows the text that has become standard in this district and is sufficiently narrow to be unexceptional" and that "the Plan provides exculpation only for acts or omissions in connection with the Plan and the bankruptcy cases. It requires, in effect, that any claims in connection with the bankruptcy case be raised in the case and not be saved for future litigation."); *In re Flushing Hosp. & Med. Ctr., 395 B.R. 229, 235 (Bankr. E.D.N.Y. 2008)* ("It is apparent that the exculpation provisions quoted above are not limited to pre-effective date claims. By their terms, these provisions apply to 'any act or omission in connection **[**20]** with, or arising out of . . . the administration of the Plan.' Adopting [the objector's] interpretation would render the 'administration of the Plan' clause meaningless, because conduct during the administration of the Plan necessarily occurs after the effective date of the Plan.").

Exculpations have been granted by courts in this district in Chapter 15 cases, including protection of non-fiduciaries. *See, e.g., In re Olinda Star Ltd., 614 B.R. 28, 48 (Bankr. S.D.N.Y. 2020)* (exculpating, among others, the indenture trustees and record holders of certain debtor-issued notes, as well as an information agent, because "such relief is necessary and appropriate to prevent interference with the consummation of" the foreign scheme of arrangement and "because without such exculpations the ability of [the foreign debtors' liquidators] and their advisors to take action to effectuate the restructuring

would be limited"); *In re Oi S.A., 587 B.R. 253, 269 n.3 (Bankr. S.D.N.Y. 2018)* (noting that the court found that the exculpation **[*469]** requested by the foreign representative was "appropriate under the circumstances").

C. ***Purdue*** **in Chapter 15s**

Courts in this district have long enforced foreign restructuring plans in Chapter 15 cases which include nonconsensual third-party releases, most doing so pursuant to *sections 1507* and *1521* of the Code. **[**21]** *See, e.g., In re Ocean Rig UDW Inc., 570 B.R. 687 (Bankr. S.D.N.Y. 2017)* (recognizing and enforcing scheme of arrangement that released affiliate guarantees); *In re Towergate Fin. plc, Case No. 15-10509-SMB, 2015 Bankr. LEXIS 4567 (Bankr. S.D.N.Y. Mar. 27, 2015)* (ECF Doc. # 16); *In re New World Res. N.V.*, Case No. 14-12226-SMB, 2014 Bankr. LEXIS 54542014 Bankr. LEXIS 5454 (Bankr. S.D.N.Y. Sept. 9, 2014) (ECF Doc. # 20); *In re Sino-Forest Corp., 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013)* (enforcing foreign order containing third-party releases); *In re Magyar Telecom B.V., Case No. 13-13508-SHL, 2013 Bankr. LEXIS 5716, 2013 WL 10399944 (Bankr. S.D.N.Y. Dec. 11, 2013)* (ECF Doc. # 26); *In re Metcalfe & Mansfield Alt. Invs., 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010)* (concluding that "principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter 11 case.").

The Supreme Court held in *Purdue* that "the Bankruptcy Code does not authorize a bankruptcy court to approve, as part of a plan of reorganization under Chapter 11, a release and injunction that extinguishes claims against non-debtor third parties without the consent of affected claimants." *603 U.S. 204, 204, 144 S. Ct. 2071, 219 L. Ed. 2d 721 (2024)*. To date, only one written decision has been issued on the question whether *Purdue* applies in chapter 15 proceedings: *In re: Crédito Real, S.A.B. de C.V., SOFOM, E.N.R., No. 25-10208 (TMH), 2025 Bankr. LEXIS 751, 2025 WL 977967, at *1 (Bankr. D. Del. Apr. 1, 2025)*. The *Credito Real* case is discussed below.

III. DISCUSSION

For this Court to provide the relief requested by the Foreign Representative, it must be available to the Foreign Representative under either *sections 1507* or *1521* of the Code. The authority to issue the exculpation and the third-party **[**22]** release contained in the Order must, therefore, stem from one of these two sections of the Code.

One of the UST's objections is consistent across both provisions: that the provision provides relief beyond the scope provided by the Brazilian Confirmation Order and the RJ Plan. This objection is addressed first, followed by provision-specific objections.

A. Provision of Relief Outside Scope of Foreign Court Orders and Plan

Both the text of *Chapter 15* and caselaw building upon it indicate that U.S. courts operating pursuant to Chapter 15 are *not* limited in the discretionary relief they grant by that relief afforded by the foreign court or the plan of reorganization. There are limitations to courts' discretionary powers under Chapter 15, but they are not obligated to grant only that relief which is similar or parallel to that granted abroad or specified in the plan at issue.

The text of Chapter 15 of the Code indicates that U.S. courts, despite being ancillaries to foreign proceedings when operating under Chapter 15, *see In re Foreign Econ. Indus.*

Bank Ltd., "Vneshprombank" Ltd., 607 B.R. 160, 168 (Bankr. S.D.N.Y. 2019), are not hamstrung by the operations of foreign courts and law when determining what relief to grant to **[*470]** the foreign representative. *Section 1521(a)* enables courts to grant "any appropriate **[**23]** relief" so long as that relief is "necessary to effectuate the purpose of [Chapter 15] and to protect the assets of the debtor or the interests of the creditors" (followed by a non-exclusive list of examples of the type of relief the court may grant). *Section 1507* permits a court to grant "additional assistance" subject to "specific limitations stated elsewhere in" Chapter 15, so long as the "additional assistance" is available "under this title or under other laws of the United States." Under the "expansive grant of power" in *section 1507*, "even if a court cannot grant relief under *section 1521(a)(7)*, it may grant relief under *section 1507*." *Credito Real, 2025 Bankr. LEXIS 751, 2025 WL 977967, at *11*. The drafters of Chapter 15 referenced principles of comity as limiting factors, rather than foreign rulings or even the availability of relief under foreign law. *See 11 U.S.C. § 1507(b)* (requiring court to consider "the principles of comity" when deciding whether to grant relief); *In re Comair Ltd., No. 21-10298(JLG), 2021 Bankr. LEXIS 3137, 2021 WL 5312988, at *9 (Bankr. S.D.N.Y. Nov. 14, 2021)* ("Post-recognition relief under *section 1521* 'is largely discretionary and turns on subjective factors that embody the principles of comity.'") (internal citation omitted).

The relief provided in the Recognition Order puts an enforcement mechanism in the U.S. order that prevents disgruntled creditors who are bound by the RJ Plan from suing in the U.S. **[**24]** to recover on claims that are barred by the RJ Plan. Granting this relief to the Foreign Representative is in furtherance of comity, as it enables the full enforcement of the RJ Plan by closing the door to potential workarounds to the Plan.

B. Exculpation

The provision in the Order which provides for an exculpation reads as follows:

> The Directed Parties and their respective officers, directors, employees, representatives, advisors, attorneys, professionals and managers, in each case, solely in their respective capacities as a Directed Party, shall be entitled to a full limitation of liability from and shall have no liability for any and all claims, obligations, suits, judgments, damages, rights, causes of action, liabilities from, or in connection with, any action or inaction taken in furtherance of and/or in accordance with this Order, these Chapter 15 Cases, the Brazilian RJ Proceeding, the Brazilian Confirmation Order and the RJ Plan, except for any liability arising from any action or inaction constituting gross negligence, fraud, willful misconduct or professional malpractice as determined by this Court.

(Order ¶ 7.)

The UST objected to the provision of this relief, as discussed above. **[**25]** It relies on a Fifth Circuit case, *Vitro S.A.B. de C.V., 701 F.3d 1031, 1044 (5th Cir. 2012)*, to structure its analysis of *section 1521* and *1507*. The Fifth Circuit in *Vitro* adopted a three-step framework to determine whether relief requested by a foreign representative is available: "a court . . . should first consider the specific relief enumerated under *§ 1521(a)* and *(b)*. If the relief is not explicitly provided for there, a court should then consider whether the requested relief falls more generally under *§ 1521*'s grant of any appropriate relief. We understand 'appropriate relief' to be relief previously available under Chapter 15's predecessor, *§ 304*. Only if a court determines that the requested relief was not formerly available

under § 304 should a court consider whether relief would be appropriate as 'additional assistance' under § 1507." Id. at 1054. Following this rubric, the UST argued that none of the seven **[*471]** enumerated bases for relief under section 1521 apply: the first five concern the debtor and do not explicitly authorize exculpations, the sixth concerns extension of relief upon the filing of a petition, and the seventh concerns the relief available to a trustee which the UST claimed is irrelevant to the limitation of liability in the Order. (Objection at 12.) The UST also found no support for the **[**26]** exculpation in section 1507. Without providing much support for its argument, it claimed that the foreign representative "can only get the relief that is set forth in the RJ Plan or is otherwise sanctioned by the Bankruptcy Code—neither of which circumstance exists here." (Objection at 17.) The first part of this argument—that this Court cannot grant such an exculpation because the exact relief is not in the RJ Plan—is addressed and rejected above. The second part of the argument—that such exculpation is not "sanctioned by the Bankruptcy Code"—is addressed below.

First, courts in this district are not bound by the analytical approach taken in *Vitro*. *See, e.g., In re PT Bakrie Telecom Tbk, 628 B.R. 859, 877 (Bankr. S.D.N.Y. 2021)* (noting that, as between sections 1521 and 1507, "often courts have found it unnecessary to determine the primacy of these two provisions if the outcome would be the same under either section," and collecting cases); In re Atlas Shipping, 404 B.R. at 741 (granting relief under section 1521 and concluding that it was unnecessary to determine whether "additional assistance" was available under section 1507).

Courts can provide exculpations in Chapter 15 proceedings to the same extent they can in Chapter 11 cases pursuant to sections 1507 and 1521, so long as the exculpation is not contrary to U.S. public policy in violation of section 1506.

In the **[**27]** Chapter 11 context, at least in this district, non-estate fiduciaries are entitled to exculpation when they have been actively involved in the bankruptcy proceeding and made significant contributions to its success, and when the exculpation applies to court-supervised and-approved transactions. In re Wythe Berry Fee Owner LLC, 2024 Bankr. LEXIS 1254, 2024 WL 2767121, at *13; In re: Klaynberg, No. 22-10165 (MG), 2023 Bankr. LEXIS 2055, 2023 WL 5426748, at *17 (Bankr. S.D.N.Y. Aug. 22, 2023) (noting that courts also look to whether parties have acted in good faith and look to whether the exculpation provision is critical to plan implementation). Gross negligence and willful misconduct must be excluded from the scope of the exculpation provision. In re Wythe Berry Fee Owner LLC, 2024 Bankr. LEXIS 1254, 2024 WL 2767121, at *13. The logical analogue in the Chapter 15 context is exculpation of parties who have been actively involved in the foreign restructuring, and who are exculpated for behavior relating to court-supervised and-approved transactions, whether those transactions are supervised here or abroad. (Where a foreign plan is enforced in the U.S. pursuant to a Chapter 15 recognition proceeding, the U.S. court may also be the one supervising and approving.) Here, the exculpated parties (the Directed Parties) are the indenture trustee of certain notes cancelled pursuant to the RJ Plan, the custodians of those notes, and the clearing system involved with **[**28]** the effectuation of the RJ Plan. (Order ¶ 7.) These parties are clearly essential to the implementation of the RJ Plan, which is being supervised by a Brazilian court. There is no indication in the record before the Court that the Directed Parties have acted in anything but good faith. Moreover, the Foreign Representative has submitted that the cancellation of these notes is "one of the

central parts of the RJ Plan" and that without the cooperation of the Directed Parties, they cannot be cancelled; **[*472]** no party has contested this claim. (Reply at 9.) The exculpation provision in the Order is, therefore, integral to the recognition and enforcement of the RJ Plan. The Court finds that the exculpation provision in the Order complies with the requirements courts place on exculpation provisions in Chapter 11 cases. *See also In re Olinda Star, 614 B.R. at 48* (granting exculpation when "necessary and appropriate to prevent interference with the consummation of the foreign restructuring scheme").

C. Putative Nonconsensual Third-Party Release

The provision in the Order which the UST claims creates impermissible third-party releases reads as follows:

> Except as provided in paragraph 12 of this Order, all persons and entities are permanently **[**29]** enjoined and restrained from (i) commencing or taking any action or asserting any claim, within the territorial jurisdiction of the United States, that is inconsistent with, in contravention with, or would interfere with or impede the administration, implementation and/or consummation of the RJ Plan, the Brazilian Confirmation Order or the terms of this Order; and (ii) taking any action against the Debtors or their property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are extinguished, novated, cancelled, discharged or released under the RJ Plan and the Brazilian Confirmation Order. No action may be taken within the territorial jurisdiction of the United States to confirm or enforce any award or judgment that would otherwise be in violation of this Order without first obtaining leave of this Court.

(Order ¶ 11.)

It is not clear that this language creates a third-party release: unlike most third-party releases, the third parties are on the plaintiff's side of the "v." ("all persons and entities," language which conceivably covers more than just the debtors' creditors and claimholders), as the defendant's side consists only of **[**30]** "the Debtors [and] their property."[3] Assuming *arguendo* that paragraph 11 of the Order does create nonconsensual third-party releases, the Court finds that it has the power to issue such an order in a Chapter 15 case, pursuant to at least *section 1521*, in support of a foreign proceeding.

Since *subsections 1521(a)(1)-(7)* do not expressly authorize non-debtor third-party releases, a court should decide whether the requested relief can be considered "appropriate relief" under *section 1521(a)*. To do so, the Court must first examine the plain language of *section 1521*. *Grajales v. Comm'r of Internal Revenue, 47 F.4th 58, 62 (2d Cir. 2022)* ("Statutory interpretation always begins with the plain language of the statute.") (internal citation and quotation marks omitted). It will then look at caselaw from Chapter 15's predecessor, *section 304*, which, as noted above, is instructive in interpreting the scope

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[3] If this provision is not, in fact, a third-party release, it should be considered an injunction in support of the RJ Plan, given that, as the Foreign Representative convincingly explained, this section of the Order is carefully limited to bar only those actions that contravene relief provided in the RJ Plan and the Brazilian Confirmation Order. (Reply at 6.) All this provision does, per the Foreign Representative, is enforce the relief granted in the Brazilian RJ Proceeding within the territorial jurisdiction of the United States. (*Id.*) Under this reading, the provision would be enforced as a foreign plan-supporting injunction, a type of relief available under *section 1521* of the Code. *See, e.g., In re Rede Energia S.A., 515 B.R. 69, 93 (Bankr. S.D.N.Y. 2014)*; ***In re Olinda Star, 614 B.R. at 47-48***.

of section 1521(a).

[*473] 1. Text of Chapter 15

Judge Horan's recent opinion in *Credito Real* provides a lucid explanation why courts can enforce nonconsensual third-party releases found in foreign plans of reorganization. Here, all parties agreed during the recognition hearing that there is no third-party release in the RJ Plan, or even in the Brazilian court order confirming the RJ Plan. Rather, there is a provision in *this* Court's order recognizing **[**31]** the Brazilian proceeding as the foreign main proceeding and enforcing the RJ Plan which might be construed as a nonconsensual third-party release. However, there is no meaningful difference between *enforcing, via order, a foreign plan* with a third-party release provision, and *issuing an order enforcing a foreign plan*, which order contains a third-party release which itself is not in the foreign plan. The practical effect is the same—a U.S. court issues an order, which takes effect in the United States, which releases claims over which the U.S. court has jurisdiction.

In *Credito Real*, Judge Horan addressed a common objection to the grant of third-party releases under sections 1521 and 1507, one which the UST made here: that courts must apply Purdue's *ejusdem generis* approach to interpreting section 1123(b) of the Code to sections 1521 and 1507, and in so doing, find that courts have no authority to grant third-party releases under those sections. Judge Horan walked through the differences in language between section 1123(b) and, in turn, 1521 and 1507, to find that courts wield significantly more power under the latter two sections. Regarding section 1521, he notes first that it allows a court to grant "any" appropriate relief, and then provides a non-exhaustive list of examples. **[**32]** 2025 Bankr. LEXIS 751, 2025 WL 977967 at *9. Section 1521(a)(7) qualifies the "any . . . including" language in the section "by explaining that any additional relief a court grants should be of the kind that is available to a trustee." 2025 Bankr. LEXIS 751, [WL] at *10. (Per Judge Horan, it is "well-settled that enforcement of a third-party release contained in a foreign plan is appropriate under that section." *Id.* (*citing In re Arctic Glacier Int'l, Inc., 901 F.3d 162 (3d Cir. 2018)* (enforcing third party releases in a Canadian plan of arrangement); In re Avanti Commc'ns Grp. PLC, 582 B.R. at 618 (finding that it had the power to enforce third-party releases under either section 1521(a)(7) or section 1507(a))).) Section 1521 thus differs from section 1123(b), which "simply states that a court may include any 'other' chapter 11 plan provision that is not "inconsistent with the applicable provisions of this title.'" *Id.* The Supreme Court in Purdue read "other" as directing courts to look to the other provisions of 1123(b) to determine what further relief a court could grant. But "section 1521(a) does not direct courts to look to the 'other' provisions"—listed in subsections (a)(1)-(7)—"when providing relief under its catchall," instead allowing "courts to grant 'any additional relief that may be available to a trustee.'" *Id.* The limitation in section 1521(a), therefore, is not whether the relief is similar to those listed in 1521(a)(1)-(7), but whether the relief is available to the trustee. Moreover, section 1521(a)(7) qualifies its **[**33]** "any . . . including" language by listing specific relief a court is *barred* from granting under that section—and that list of prohibited relief does not include nonconsensual third-party releases. "By establishing explicit boundaries, Congress allowed relief that does not exceed those boundaries . . . . By specifically enumerating relief that the court cannot grant under section 1521, Congress more concretely defined the outer bounds of what the court can grant, thus also more concretely defining what

is included in what the court can grant, bearing in mind the guiding principles of comity and cooperation." **[*474]** *Id.*; *see also* 2025 Bankr. LEXIS 751, [WL] at *11 (citing the canon of *expressio unius* to support the conclusion). Judge Horan conducts a similar analysis of section 1507 to again find that, unlike section 1123(b), it establishes a broad set of powers and precisely defines the court's limitations under that section, "provid[ing] a more explicit and fuller picture of the broad relief a court may grant, as compared to that in section 1123(b)(6)." 2025 Bankr. LEXIS 751, [WL] at *11. In sum, both sections 1521 and 1507 differ from 1123(b) "because section 1123(b) does not expressly establish specific boundaries; instead, it directs courts to look to the rest of the Bankruptcy Code to determine whether a provision is appropriate. Because Congress **[**34]** expressed specific prohibitions [in 1521 and 1507], courts do not need to read further into its words like they do for section 1123(b). The plain language of section 1507 (and section 1521) already enumerates the boundaries unambiguously." 2025 Bankr. LEXIS 751, [WL] at *12.

Section 1522(a) permits the Court to grant relief pursuant to section 1521 only if the interests of creditors, the debtor, and other interested entities are "sufficiently protected." "Sufficient protection" embodies "three basic principles: 'the just treatment of all holders of claims against the bankruptcy estate, the protection of U.S. claimants against prejudice and inconvenience in the processing of claims in the [foreign] proceeding, and the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law.'" Atlas Shipping, 404 B.R. at 740. The Court finds that, in the present case, the issuance of a third-party release which enables the distribution of the foreign debtor's estate in the manner set forth in the RJ Plan enables the just treatment of all claimants, substantially in accordance with U.S. law.

Section 1506 provides another boundary: a bankruptcy court may decline to grant relief requested in a Chapter 15 case if the action would be "manifestly contrary to the public policy of the United States." **[**35]** 11 U.S.C. §§ 1506. This public policy exception is narrowly construed. *See* In re Ocean Rig UDW Inc., 570 B.R. at 707. Purdue did not hold that nonconsensual third-party releases are contrary to the public policy of the U.S. In fact, the majority expressly stated that "[b]oth sides of this policy debate may have their points." Purdue, 603 U.S. at 226. The Supreme Court's holding was narrow: Chapter 11 of Title 11 does not provide bankruptcy courts, in Chapter 11 cases, with the authority to authorize such releases. It cannot be read to hold that nonconsensual third-party releases are "manifestly contrary to" U.S. public policy such that they would be barred by section 1506. *See also* Credito Real, 2025 Bankr. LEXIS 751, 2025 WL 977967, at *15-16 (similar).

Following the logic of Credito Real and Purdue, the Court finds that the text of section 1521 permits the grant of a nonconsensual third-party release in support of a foreign debtor's plan of reorganization. Pre-Code caselaw, as well as opinions interpreting section 304, also support this finding.

Longstanding precedent holds that bankruptcy courts can strip U.S. parties of rights they have under the laws of the United States. As far back as 1883, the Supreme Court sanctioned the enforcement of a Canadian scheme of arrangement under which certain bonds would be issued to replace prior ones. U.S. bondholders argued that **[**36]** the scheme of arrangement, to which they had not consented, was imposed in such a way that violated the U.S. Constitution's bar on certain contractual impairments and hence the scheme should not be recognized by U.S. courts; the Supreme Court rejected this argument:

> **[*475]** [E]very person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him.

Canada Southern Ry. Co. v. Gebhard, 109 U.S. 527, 537-38, 3 S. Ct. 363, 27 L. Ed. 1020 (1883). And building on *Gebhard*, the Second Circuit in *Cunard* dismissed a U.S. lawsuit solely on the grant of comity to a foreign proceeding. *Cunard S.S. Co. Ltd v. Salen Reefer Servs. AB, 49 B.R. 614, 618 (S.D.N.Y. 1985)*, *aff'd sub nom. Cunard S.S. Co. v. Salen Reefers Servs. AB, 773 F.2d 452, 452 (2d Cir. 1985)*. The sole concern of the Second Circuit was that the foreign court governing the foreign proceeding was a court of competent jurisdiction, **[**37]** and that enforcement of the foreign proceeding would not violate public policy in the U.S.; the fact that U.S. law would have led to a different outcome, and even the fact that a right granted by U.S. law was being stripped by enforcement, did not matter. *Id. at 617-19*.

A battery of similar cases makes it clear that a party can lose rights in an ancillary proceeding which it otherwise would have had in a plenary case under the Bankruptcy Code. *See, e.g., In re Ephedra Prods. Liab. Litig., 349 B.R. 333, 337 (S.D.N.Y. 2006)* (recognizing Canadian order as an exercise of comity even though it overrode a defendant's constitutional right to a civil jury trial); *In re Bd. of Directors of Multicanal S.A., 307 B.R. 384, 389-91 (Bankr. S.D.N.Y. 2004)* (holding that foreign law can "override" U.S. law (specifically, the Trust Indenture Act) via the enforcement of a foreign plan pursuant to *section 304* which deprived a creditor of rights that he would have had under the TIA); *see also Allstate Life Ins. Co. v. Linter Group Ltd., 994 F.2d 996, 999-1000 (2d Cir.1993)* (dismissing bondholders' federal securities fraud action in granting comity to Australian insolvency proceeding, as it would have been "inefficient and inequitable to permit the individual claims to go forward. Indeed, since these individuals were sued solely because of their affiliation with the [foreign debtors], to allow these claims to go forward in the United States . . . would defeat **[**38]** the purpose of granting comity in the first place."); *Lindner Fund, Inc. v. Polly Peck Int'l PLC, 143 B.R. 807, 807-11 (S.D.N.Y.1992)* (dismissing federal securities fraud action in favor of foreign reorganization based on comity and noting that "American courts have traditionally extended comity to foreign bankruptcy proceedings by dismissing actions filed by creditors in United States courts"); *Smith v. Dominion Bridge Corp., No. 96-7580, 1999 U.S. Dist. LEXIS 2131, 1999 WL 111465, at *1-5 (E.D. Pa. Mar. 2, 1999)* (staying action against foreign debtor in U.S. courts out of comity considerations, and noting that courts have, under certain circumstances, extended the stay to cover non-debtor co-defendants).

As the Second Circuit has previously stated, "deference to the foreign court is appropriate so long as the foreign proceedings are procedurally fair and . . . do not contravene the laws or public policy of the United States." *United JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V., 412 F.3d 418, 424 (2d Cir. 2005)*. So long as these guidelines are respected, **[*476]** a long string of caselaw indicates that bankruptcy courts may, acting as ancillaries to foreign proceedings, extinguish

claims that would be available in plenary actions in the U.S. in the name of comity.

2. Pre-*Purdue* Caselaw

Given the above analysis, it is not surprising that pre-*Purdue* chapter 15 courts which faced the question whether limitations on a bankruptcy court's powers in plenary cases carried over into the **[**39]** chapter 15 context came to the same conclusion that courts operating under *section 304* did: ancillary cases are fundamentally different, and limitations that exist in plenary cases do not always carry over. In *In re Metcalfe & Mansfield Alternative Invs.*, the court had to determine whether a third-party release which might not be available in a plenary case under chapter 11 should be granted in a chapter 15. *421 B.R. at 694*. The potential limiting factor there was not the appropriateness of the release under *Metromedia* (moot post-*Purdue*), but a more fundamental one—the *jurisdictional* limitation on chapter 11 courts in *Manville*. The *Metcalfe* court determined that the scope of its authority to release non-debtors in plenary proceedings did not matter because such jurisdictional limitations did not carry over into the chapter 15 context: "whatever the precise limits of a bankruptcy court's jurisdiction to approve a third-party non-debtor release and injunction in a plenary chapter 11 case, the important point for present purposes is that the jurisdictional limits derive from the scope of bankruptcy court 'related to' jurisdiction under *28 U.S.C. § 1334*, and the prudential limits courts have applied in chapter 11 cases under the Bankruptcy **[**40]** Code. This Court is not being asked to approve such provisions in a plenary case; rather, the Court is being asked to order enforcement of provisions approved by the Canadian courts. The correct inquiry, therefore, is whether the foreign orders should be enforced in the United States in this chapter 15 case." *Id. at 695-96*. The *Metcalfe* court then moved onto what it considered to be the sole limiting factor: whether *principles of comity* counseled in favor of the grant. *Id.* *Metcalfe* was a *section 1507* case, but its holding carries over into *section 1521*: there is no reason why a jurisdictional limitation *on bankruptcy courts acting in plenary cases* should hamper courts' ability to act as ancillaries to foreign proceedings. Its logic still holds after *Purdue*: *Purdue* only held that *chapter 11* of the Code does not give courts the power to grant such releases, and did not say anything about limitations on the power of courts to act as ancillaries to foreign proceedings under chapter 15.

To summarize, (1) the plain text of Chapter 15, (2) caselaw under its predecessor (*section 304*), and (3) pre-*Purdue* caselaw in this district all support a finding that courts can, pursuant to *section 1521* of the Code, issue orders pursuant to their discretionary powers under *section 1521* which contain **[**41]** nonconsensual third-party releases, whether or not those releases originate from a foreign court. Having found that this power exists under *section 1521*, this Court need not conduct a full analysis of *section 1507* to determine whether it, too, so permits. *See* *In re Sino-Forest Corp., 501 B.R. at 666* (recognizing and enforcing foreign court order approving non-debtor release); *In re Avanti Commc'ns Grp. PLC, 582 B.R. at 618* (same); *Metcalfe & Mansfield, 412 B.R. at 696* (same).

IV. CONCLUSION

For the foregoing reasons, this Court finds that it had the authority under the Code to issue the Order as written. The **[*477]** United States Trustee's objections were **OVERRULED**.

Dated: April 21, 2025

New York, New York

/s/ ***Martin Glenn***

MARTIN GLENN

Chief United States Bankruptcy Judge

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In re Siu-Fung Ceramics Holdings

United States Bankruptcy Court for the Southern District of Texas, Houston Division

February 10, 2026, Decided; February 10, 2026, Entered

CASE NO: 24-33299, CHAPTER 15

Reporter
2026 Bankr. LEXIS 355 *; 2026 LX 18366; 2026 WL 382424

IN RE: SIU-FUNG CERAMICS HOLDINGS LIMITED, Debtor.

Counsel: [*1] For Siu-Fung Ceramics Holdings Limited, Debtor: Stephen M. Packman, Archer & Greiner, P.C., Houston, TX.

For Terry LK Kan, Anita CM Hou, Alan CW Tang, Foreign Representative: Brian M Gargano, Archer & Greiner P.C., Houston, TX; Jiangang Ou, Archer & Greiner, P. C., Houston, TX; Stephen M. Packman, Archer & Greiner, P.C., Houston, TX.

For SF Siegfried Lee, Defendant: Erik Andrew Knockaert, Schreiber Knockaert PLLC, Houston, TX.

For US Trustee, 11, U.S. Trustee: Hector Duran, Jr, U.S. Trustee, Houston, Tx.

Judges: Alfredo R. Pérez, United States Bankruptcy Judge.

Opinion by: Alfredo R. Pérez

Opinion

MEMORANDUM OPINION DENYING VERIFIED PETITION FOR RECOGNITION (RELATES TO ECF NOS. 1 & 2)

BACKGROUND

I. FACTUAL BACKGROUND.

A. The Siu-Fung Group Liquidation Proceedings and Siu-Fung Seigfried Lee's Personal Bankruptcy.

Siu-Fung Ceramics Holdings Limited (hereinafter "SFCH") was incorporated in Bermuda on August 12, 1993, pursuant to the Laws of Bermuda in accordance with the provisions of the Companies Act, 1981 of Bermuda with the status as an exempted company.[1] On October 22, 1993, SFCH was registered in Hong Kong under Part XI of Chapter 32 of the Companies Ordinance of the Laws of Hong Kong (hereinafter "Chapter 32") and shortly **[*2]** thereafter established its principal place of business in Hong Kong.[2] Siu-Fung Ceramics Concept Company Limited (hereinafter "SFCCC") was incorporated in the British Virgin Islands (hereinafter the "BVI") on September 21, 1994 pursuant to the Laws of the BVI in accordance with the provisions of the International Business Companies Act (No. 8 of 1984) of the BVI.[3] The registered office of SFCCC is located at a post office box in the BVI, and its principal place of business is in Hong Kong.[4] NHD Systems (Holdings) Limited (hereinafter "NHD Holdings") was incorporated in Hong Kong on July 30, 1992, pursuant to

[1] ECF No. 2, Ex. B at 2.

[2] *Id.*

[3] *Id.* at 12.

[4] *Id.*

Chapter 32.[5] NHD Holdings' registered office is located in Hong Kong.[6] NHD Systems (Asia) Limited (hereinafter "NHD Asia") was incorporated on March 12, 1995, in Hong Kong pursuant to Chapter 32.[7] NHD Asia's registered office is in Hong Kong.[8] Siu-Fung Concept Limited (hereinafter "SFC") was incorporated in Hong Kong on May 20, 1983, pursuant to Chapter 32.[9] SFC's registered office is in Hong Kong.[10]

SFCH, SFCCC, NHD Holdings, NHD Asia, and SFC (collectively, the "Siu-Fung Group" or "Siu-Fung Group Debtors" or the "Group") were part of a corporate empire spanning across Hong Kong and the People's Republic of China **[*3]** (hereinafter the "PRC") during the 1980s and 1990s. With SFCH as its top holding company, the Siu-Fung Group was a listed company on the Hong Kong Stock Exchange whose operations included running, through various subsidiary companies, a variety of joint ventures in Hong Kong and the PRC, the principal ventures of which revolved around the ceramic sanitary ware industry.[11] Central to this Chapter 15 Petition for Recognition are investment interests SFC held in a major joint venture in Beijing known as Siu-Fung Ceramics (Beijing) Sanitary Ware Company Limited (hereinafter "BSW").[12]

In May and June of 2000, the Siu-Fung Group entities were placed into "winding-up" liquidation proceedings by the High Court of the Hong Kong Special Administrative Region Court of First Instance (hereinafter the "HK High Court").[13] On June 14, 2000, the HK High Court appointed Messrs. Alan Chung Wah Tang (hereinafter "Mr. Tang") and Gabriel Chi Kok Tam (hereinafter "Mr. Tam") jointly and severally as provisional liquidators of SFCH.[14] At the time of his appointment, Mr. Tang was a partner at KPMG and had extensive experience as a liquidator and trustee in Hong Kong insolvency proceedings.[15] The **[*4]** Siu-Fung Group's liquidation proceedings remain active and pending since the original HK High Court Orders were issued in 2000.[16]

Siu-Fung Seigfried Lee (hereinafter "Mr. Lee") was a major shareholder, director, and chairman of the Siu-Fung Group.[17] In 1995 and 1996, because of serious financial difficulties the Siu-Fung Group was experiencing at the time, Mr. Lee provided personal guarantees to secure financing for the Group from a number of Hong Kong lending institutions, including Hongkong and Shanghai Banking Corporation, Limited (hereinafter "HSBC"), and DBS Bank (Hong Kong) Limited.[18] Despite Mr. Lee's efforts, the Group continued to experience a deteriorating financial position.[19] In 1997, HSBC demanded Mr. Lee repay HK$177.63 million due under various term loan facilities, and on January 18, 2001, filed a "bankruptcy petition for indebtedness in the aggregate sum of HK$322

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[5] *Id.* at 19.

[6] *Id.*

[7] *Id.* at 27.

[8] *Id.*

[9] *Id.* at 34.

[10] *Id.*

[11] *Tang Trial Transcript*, ECF No. 76, at 16 ¶¶ 23-25, 17 ¶¶ 1-2.

[12] ECF No. 54-29, at 7 ¶ 4.1.

[13] ECF No. 2, Ex. B at 9-11, 16-18, 24-26, 31-33, 38.

[14] ECF No. 52-7, at 2.

[15] ECF No. 75, at 28 ¶¶ 23-25, 29 ¶¶1-19, 32 ¶¶ 5-8.

[16] ECF No. 80-5, at 61 ¶ 86.

[17] ECF No. 53-3, at 6 ¶ 7.

[18] *Id.* at 8 ¶¶ 13-14.

[19] *Id.*

million" against Mr. Lee.[20] On May 8, 2001, Mr. Lee was adjudged bankrupt per a HK High Court Order (hereinafter the "Lee 2001 Bankruptcy").[21] On September 19, 2002, at a general meeting of creditors, Mr. Tang and Alison Wong Lee Fung Ying (hereinafter "Ms. Wong") were appointed as joint and several trustees for the **[*5]** Lee 2001 Bankruptcy.[22] Mr. Tang has remained the trustee of the Lee 2001 Bankruptcy since his appointment in 2002, and currently acts in that role alongside his co-trustee Anita Hou Chung Man (hereinafter "Ms. Hou"), who replaced Ms. Wong on April 9, 2015.[23]

In 2001, Mr. Tang left KPMG and temporarily ceased being a liquidator for the Siu-Fung Group.[24] Mr. Lee received a personal discharge in the Lee 2001 Bankruptcy as of May 8, 2005.[25] Under Hong Kong Law, despite Mr. Lee's personal discharge, Mr. Tang remained in his position as trustee and continued with his statutory duty of collecting, realizing, and distributing the assets of the bankrupt that fell within the estate.[26] In connection with his duties as trustee, Mr. Tang continued to investigate Mr. Lee and his family members and their involvement with allegedly fraudulent transfers of assets of the Siu-Fung Group prior to and during the Siu-Fung Group liquidation proceedings.[27] According to Mr. Tang, despite Mr. Lee having received a personal discharge, these continued investigations were necessary because (i) Mr. Lee and his family members have been uncooperative with discovery orders issued in the Lee 2001 Bankruptcy and ongoing **[*6]** Siu-Fung Group liquidation proceedings, and (ii) investigating possible fraudulent transfers may provide the basis for additional claims against Mr. Lee in the Lee 2001 Bankruptcy under Hong Kong law.[28] Mr. Tang has issued multiple reports in the Lee 2001 Bankruptcy relating to these investigations over the last 24 years and has engaged in more substantive investigations of Mr. Lee and his family members since 2016 following Mr. Tang's reappointment as joint liquidator for the Siu-Fung Group.[29] Upon Mr. Tang's reappointment in May and June of 2016, Terry Lap Kee Kan (hereinafter "Mr. Kan") replaced Mr. Tam as joint liquidator alongside Mr. Tang.[30] Mr. Tang, Mr. Kan, and Ms. Hou (collectively the "Foreign Representatives" or "FRs") have remained as joint and several liquidators and/or trustees of the Siu-Fung Group and the Lee 2001 Bankruptcy, respectively, until the present.

B. The BSW Sale and Alleged Fraudulent Transfer of Mr. Lee's Assets to the United States.

Below is a summarization of the last 24 years of the FRs' investigation into Mr. Lee and his family members in connection with the Lee 2001 Bankruptcy. For reasons discussed below, the Court has potential **[*7]** reservations as to the credibility of both Mr. Tang and Mr. Lee's testimony and their respective characterizations of the events that have occurred over the last 24 years with respect to the Siu-Fung Group liquidation proceedings, the Lee 2001 Bankruptcy, and the alleged fraudulent transfer of Mr. Lee's

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[20] *Id.* at 5 ¶ 2.

[21] ECF No. 54-1, at 3 ¶ 7.

[22] ECF No. 52-13, at 1.

[23] ECF No. 52-14, at 1.

[24] ECF No. 75, at 29 ¶¶ 5-11.

[25] ECF No. 55-1, at 1.

[26] ECF No. 80-5, at 40 ¶ 52.

[27] *Tang Trial Transcript*, ECF No. 75, at 77 ¶¶ 5-9.

[28] ECF No. 52-29, at 10 ¶ 7.5.

[29] *See generally* ECF Nos. 53-3-5, 54-1-29, 56-1-3.

[30] ECF No. 52-8, at 1-2 ¶ 2.

assets to the United States. The merits of any fraudulent transfer claim the FRs may have against Mr. Lee in connection with the Lee 2001 Bankruptcy is not before the Court today. This Court's summarization laid out *infra* is meant to provide context for this Chapter 15 Petition for Recognition, and to help determine whether the FRs satisfied the requirements of *sections 1517* and *109(a) of the Bankruptcy Code*.

According to the FRs, the Siu-Fung Group was restructured in 1994, whereby a 20% interest the Group held in BSW was placed into a wholly owned subsidiary Kingbridge Investments Limited (hereinafter "Kingbridge"), a BVI company incorporated in 1994.[31] Accordingly, after the restructuring, SFCH held a 36% interest in BSW; Kingbridge held a 20% interest; Hillmond International Holdings Limited (hereinafter "Hillmond") held 22%; and a mainland PRC entity Beijing Glass No. 2 Factory (hereinafter "Beijing Glass Corp") held 22%. **[*8]** [32] According to the FRs, on May 15, 1999, Kingbridge was transferred to World Cheer Enterprises Limited (hereinafter "World Cheer"), a Hong Kong company incorporated in 1999, for "nil" consideration.[33] According to the FRs, under Hong Kong law this transfer fell within the "voidable claw-back" period of five years from the Siu-Fung Group liquidation in 2000, as a "transaction at an undervalue."[34]

On July 12, 2001, as part of the liquidation of the Siu-Fung Group, Mr. Tang, as then-acting joint liquidator of SFCH approved a sale of portions of the Siu-Fung Group through a HK High Court facilitated process.[35] Because the Siu-Fung Group was—at the time—a listed company on the Hong Kong Stock Exchange, the local Listing Rules for the Exchange required a press announcement of the sale (hereinafter the "2001 Announcements"), which occurred on August 13 and 14 of 2001.[36] Per the 2001 Announcements, an agreement was entered into for the sale of the 36% interest in BSW (hereinafter the "BSW Sale") from the Siu-Fung Group to Kingbridge, then a wholly owned subsidiary of World Cheer, for HK$17 million.[37]

Also as part of the transaction, a 70% interest in Dubois Beijing, another Siu-Fung-owned joint **[*9]** venture, was sold to Asset Reward—a wholly owned subsidiary of Lion Legend Holdings Limited (hereinafter "Lion Legend"), which is a Cayman company owned up to 68% by Capital Ocean Enterprises Limited (hereinafter "Capital Ocean") and up to 32% by World Cheer—for consideration of HK$2 million.[38] At the time of the BSW Sale, the 2001 Announcements stated that World Cheer was beneficially owned by Wong Ying, Yip Siu Yin and Fu De Liang.[39] The 2001 Announcements also described Capital Ocean as a BVI company wholly-beneficially owned by Mr. Lee's brother, Dr. Li Xiao Yi, Benjamin (hereinafter "Mr. Benjamin Li").[40] The 2001 Announcements stated the three beneficial owners of World Cheer were independent and not connected with the liquidators of the Siu-Fung Group, Mr. Lee, Mr. Benjamin Li, nor the substantial shareholders of the Siu-Fung Group and their respective associates as defined under the Hong Kong Stock Exchange

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[31] ECF No. 54-29, at 8 ¶ 4.2.

[32] *Id.* at 16 ¶ 10.6; ECF No. 60-9, at 11.

[33] ECF No. 54-29, at 4 ¶ 4.3

[34] *Id.*

[35] *Id.* at 4-5, ¶ 5.1.

[36] ECF No. 60-9; ECF No. 125-1.

[37] ECF No. 60-9, at 2; ECF No. 125-1, at 2.

[38] *See supra* note 37.

[39] ECF No. 60-9, at 7; ECF No. 125-1, at 7.

[40] ECF No. 60-9, at 6-7; ECF No. 125-1, at 7.

Listing Rules.[41]

As part of the BSW Sale, the 2001 Announcements stated Lion Legend would appoint Mr. Lee as a consultant to "the acquired business," and Mr. Benjamin Li as chairman to the "acquired business."[42] According to Mr. Tang's testimony at trial and the 2001 Announcements, **[*10]** the plan after the BSW Sale was for Mr. Benjamin Li to continue to restructure the Siu-Fung Group in order to re-list it quickly, which was a common practice during the Asian Financial Crisis.[43]

According to the FRs, on March 20, 2003, World Cheer transferred 100% of Kingbridge to Lion Legend. In 2005, Mr. Benjamin Li would allegedly transfer ownership of Lion Legend to Mr. Lee's son Lelalertsuphakun Surasak (hereinafter "Surasak"), (although theories as to how these alleged transfers may have occurred remain obscure to both the FRs and this Court).[44]

According to the FRs, on May 28, 2012, China Eco-Farming Limited, a company previously listed on the Growth Enterprise Market board of the Hong Kong Stock Exchange, made an announcement that it had acquired from Lion Legend a 10% interest in Kingbridge.[45] Allegedly, the announcement listed major shareholders of Lion Legend as, *inter alia*, Goldsmith International Limited (hereinafter "Goldsmith"), a BVI company incorporated in 1998, Capital Ocean and Shine Eagle Holdings Limited.[46] Allegedly, these shareholder companies were all wholly owned by **[*11]** Surasak at the time, who also acted as their sole director.[47] Surasak was also the alleged sole director of Lion Legend at the time.[48]

On March 26, 2015, Roy Ceramics SE (later changed to Roy Asset Holding in 2019) (hereinafter the "Roy Group"), was listed on the Frankfurt stock exchange.[49] According to the FRs, the Roy Group's 2014 Annual Report listed BSW as an asset, showing a value of €203 million.[50] According to the FRs, in exchange for Surasak's contribution of BSW and other assets from the Siu-Fung Group, the Roy Group issued shares to Shine Eagle Trust Reg (hereinafter "Shine Eagle"), totaling 65% of the Roy Group's outstanding shares.[51] According to the FRs, 100% of Shine Eagle was owned in varying amounts by Surasak,

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[41] ECF No. 60-9, at 7; ECF No. 125-1, at 7.

[42] ECF No. 60-9, at 9; ECF No. 125-1, at 9. The Court understands the term "acquired business" to refer to both portions of Dubois Beijing and BSW sold to Lion Legend and World Cheer, respectively. *Id.*

[43] ECF No. 60-9, at 9; ECF No. 125-1, at 9; *Tang Trial Testimony*, ECF No. 75, at 43 ¶¶ 16-25. In addition to the primary sale of BSW to Mr. Li, Mr. Tang allegedly orchestrated sales of one or two others joint ventures in various parts of China before leaving his position as joint liquidator for the Group. *Tang Trial Testimony*, ECF No. 75, at 44 ¶ 11-14; *Tang Trial Testimony*, ECF No. 156, at 108 ¶¶ 7-8. Despite the consummation of the sale and approval by Mr. Tang, the Parties at trial raised allegations that a Shenzhen Court in the PRC issued an order freezing the 36% interest in BSW, which was unfrozen only after Mr. Lee and his brother paid either one or two HK$100,000 "charges" to that court. *Tang Trial Testimony*, ECF No. 156, at 105 ¶¶ 23-25, 106 ¶¶ 1-9; *Lee Trial Testimony*, ECF No. 117, at 43 ¶¶ 10-12, 44 ¶¶ 15, 17, 19, 45 ¶¶ 6-7 Mr. Tang characterizes these charge payments as further indicia that the 36% sale was fraudulent, however the Court fails to see the connection between a charge the Lee/Li brothers paid to a Shenzhen Court and allegations that the consideration Mr. Benjamin Li provided for the 36% of shares actually came from Mr. Lee. Moreover, the merits of any fraud case Mr. Tang might ultimately bring against Mr. Lee are not before this Court.

[44] ECF No. 66-31.

[45] ECF No. 101, at 20-21 ¶ 43(5).

[46] *Id.*

[47] *Id.*

[48] ECF No. 54-29, at 19 ¶ 10.2.

[49] *Id.*

[50] *Id.*

[51] *Id.*

Mr. Lee's daughter Lelalertsuphakun Sujida Lee (hereinafter "Sujida"), and Mr. Lee's wife Yang Lei.[52] The Roy Group listing prospectus, issued in March of 2015, apparently listed Lion Legend as a wholly owned subsidiary, having been indirectly owned by Surasak through Capital Ocean and Siu-Fung Concept Limited (hereinafter "SFC-BVI") since 2001.[53] SFC-BVI is allegedly a BVI company incorporated in October of 2000, which bore a similar name to the aforementioned SFC—a **[*12]** Hong Kong company incorporated in 1983 that exists within the liquidating Siu-Fung Group.[54] The FRs believe this confusing similarity in names was meant to obfuscate the true ownership of the BSW assets, attempting to fabricate the image that through SFC-BVI, Lion Legend had legitimate ownership of the BSW assets since 2001.[55] According to the FRs, from 2015 until 2024, various members of the Lee family, including Mr. Lee, Surasak, Sujida, and Yang Lei sat in a number of different key management and C-Suite executive positions for companies within the Roy Group, including Lion Legend.[56]

On August 26, 2014, Mr. Lee also incorporated Roy USA, Inc. (hereinafter "Roy USA") in California, which at the time was a wholly owned subsidiary of SFC-BVI.[57]

According to the FRs, in September of 2015, after the listing of the Roy Group on the Frankfurt Stock Exchange, Mr. Lee orchestrated a sale of Lion Legend's 100% ownership interest in Kingbridge and Hillmond, both of which then purportedly housed the BSW assets, to White Horse Holdings Limited (hereinafter "White Horse") for $80 million (hereinafter the "PRC Sale").[58]

In light of the information contained in the Roy Group prospectus listing **[*13]** from 2015, the FRs speculated as to what truly occurred during the 2001 BSW Sale and the subsequent history of transfers of BSW to the Roy Group through Lion Legend. The FRs brought their speculations and suspicions to the HK High Court in the Lee 2001 Bankruptcy, and on September 28, 2016, and September 21, 2017, Justice Godfrey Lam of the HK High Court issued discovery and examination orders under Section 29 of the Bankruptcy Ordinance (Chapter 6) (hereinafter the "Lam S29 Orders") against Mr. Lee, Mr. Benjamin Li, Surasak, and Mr. Lee's two sisters.[59]

In rendering his decision to enter the S29 Orders, Justice Lam acknowledged a 2004 report from the Hong Kong Insider Dealing Tribunal, which found Mr. Lee had engaged in approximately HK$25 million in insider dealing transactions, as well as having "feathered a nest offshore to avoid his creditors in Hong Kong" through use of his family members, subordinates, and their family members.[60] Moreover, Justice Lam also contemplated "suspicion" that arose as to the original BSW Sale and transfer of BSW to the Roy Group in light of information adduced from the Roy Group listing in 2015.[61]

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[52] *Id.* at ¶ 10.3.

[53] ECF No. 101, at 22 ¶ 43(6).

[54] ECF No. 54-29, at 21 ¶ 10.7.

[55] *Id.*

[56] *Id.* at 19-21, ¶¶ 10.4, 10.5.

[57] ECF No. 66-1, at 2; ECF 60-24 at 2.

[58] ECF No. 56-11, at 68; ECF No. 21 at ¶ 10.9; ECF No. 151, at 23. At the time of the PRC Sale, Kingbridge allegedly owned 67.11% of BSW, Hillmond owned 10.89%, and Beijing Glass Corp still owned the 22% it had apparently retained since prior to 1995. It remains to be seen both by the FRs and this Court how Lion Legend acquired ownership of Hillmond and how Kingbridge acquired a 67.11% stake in BSW.

[59] ECF No. 54-6 at 2, 63.

[60] *Id.* at 4-5 ¶ 6.

[61] *Id.* at 27 ¶ 59.

These subsequent 2016 and 2017 examinations in connection **[*14]** with the Lam S29 Orders allegedly revealed to Mr. Tang that Mr. Benjamin Li paid "very little, if not nothing" for the 36% BSW interest and 70% Dubois Beijing interest acquired during the BSW Sale.[62] Moreover, after reviewing KPMG records kept in connection with the Siu-Fung Group liquidation since 2001, the FRs allegedly discovered that the source of funding for the BSW Sale came from Goldsmith.[63] According to the FRs, during the relevant period of time between July 12, 2001, and August 8, 2003, in which Goldsmith was making payments in accordance with the BSW Sale, the company was managed by Wong Ying (a major shareholders of World Cheer at the time of the BSW Sale) and He Feng, both of whom were former employees of the Siu-Fung Group and "close personal lieutenants of [Mr.] Lee."[64] As above, Mr. Benjamin Li would then allegedly transfer Lion Legend and the BSW assets to Surasak, who would contribute them to the Roy Group. According to the FRs, therefore, the pre-bankruptcy transfer of BSW to Kingbridge and subsequent transfer to World Cheer, the BSW Sale, subsequent transfers over the next decade, and eventual PRC Sale to White Horse enabled Mr. Lee to maintain ownership of his assets, **[*15]** circumventing the Siu-Fung Group liquidation and Lee 2001 bankruptcy by using Mr. Benjamin Li, Wong Ying, He Feng, Surasak, and other Lee family members as strawmen for transactions orchestrated by Mr. Lee himself.[65]

In August of 2016, Mr. Lee left Hong Kong and moved to California on an F2 visa he obtained in connection with his employment at Roy USA.[66] After arriving in the United States, Mr. Lee allegedly transferred the proceeds of the PRC Sale to the Roy Group, which in turn transferred $60 million of those proceeds to Roy USA.[67] The corporate structure of the Roy Group would subsequently evolve. As of 2020, the Roy Group owned 100% of Lion Legend, which in turn owned Roy USA, along with a number of California and Texas-based Roy Group subsidiaries operating as real estate investment vehicles.[68] After the $60 million transfer to Roy USA, Mr. Lee would allegedly use $34 million of those proceeds to fund his real estate projects in Houston, Texas.[69]

Also in 2016, according to the FRs, Mr. Lee orchestrated the transfer of a majority ownership interest in Roy Group shares from Shine Eagle to Hi Scene Industrial, Limited (hereinafter "HSI") a BVI company incorporated in 1999, **[*16]** allegedly owned and directed by Sujida as of 2016.[70] In March

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[62] ECF No. 54-29, at 9 ¶ 5.3.

[63] *Id.* at 9-11 ¶¶ 5.5, 5.7.

[64] *Id.*

[65] According to the FRs, Mr. Lee also allegedly orchestrated fraudulent sales of other Siu-Fung Group joint ventures to non-debtor third parties and insiders between the years 1995 to 1999 for cash totaling approximately HK$210 million in the lead-up to the Group's liquidation in 2000. *Id.* at 18 ¶ 9.1. According to the FRs, the cash proceeds for the sale of these joint ventures were not reported as part of the Lee 2001 Bankruptcy, effectively defrauding creditors in both the yet-to-be-filed Siu-Fung Group liquidation, as well as Mr. Lee's yet-to-be-filed personal bankruptcy. *Id.* The FRs believes portions of those sale proceeds were used to fund the consideration for the BSW Sale purportedly provided by Mr. Benjamin Li. ECF No. 66-31. On October 25, 2017, Mr. Tang filed a claim in the Lee 2001 Bankruptcy for recovery of these unreported "after-acquired" assets, along with an accounting for a substantial portion of the alleged sales that did not contain corresponding receipts. ECF No. 54-4. These claims remain pending as of today.

[66] ECF No. 59-1; *see also* ECF No. 59-2. There is substantial dispute between the Parties as to whether Mr. Lee moved to California in response to the Lam S29 Orders which required him to respond to examinations in front of a HK High Court Master in connection with the Lee 2001 Bankruptcy.

[67] ECF No. 99-2, at 68 ¶¶ 5-10; ECF No. 151 at 24.

[68] ECF No. 60-28.

[69] ECF No. 99-2, at 62 ¶¶ 4-24.

[70] ECF No. 54-29, at 22 ¶ 10.12.

2017, Mr. Lee began leasing and living in a home in Pasadena, California. In August of 2022, this home was allegedly titled to Hi Scene Industrial, Inc. (hereinafter "Hi Scene") (a California company incorporated on June 30, 2022), for no consideration.[71] Sujida is allegedly the owner, director, and CEO of Hi Scene as well.[72]

Despite moving to the United States in 2016, the FRs continued with their examination attempts and discovery requests against Mr. Lee and his family members in connection with the Lee 2001 Bankruptcy for the next nine years, until present day.[73] According to the FRs, Mr. Lee and his family members remained evasive and un-cooperative as to the FRs examinations, often failing to appear, and generally failing or refusing to hand over documents in connection with discovery requests.[74] The HK High Court issued various orders for costs against Mr. Lee for his failing to appear and for the FRs' efforts in filing notices in the Lee 2001 Bankruptcy.[75] On June 9, 2020, the HK High Court ordered Mr. Lee to pay the FRs costs totaling approximately HK $128,000 based on Mr. Lee's non-cooperation.[76] On December 18, 2020, the **[*17]** HK High Court issued an Allocatur Order against Mr. Lee for approximately HK$5.6 million in fees the FRs had accumulated in connection with pursuing the Lam S29 Orders over the preceding three to four years.[77]

On January 11, 2023, Mr. Tang and Ms. Hou filed a complaint (hereinafter the "California Lawsuit") in the Superior Court of California, County of Los Angeles Civil Division (hereinafter the "California Court") seeking to domesticate foreign judgments against Mr. Lee based on the HK High Court orders for costs and the Allocatur Order.[78] On March 28, 2023, Mr. Tang and Ms. Hou filed a second involuntary bankruptcy petition (hereinafter the "Lee 2023 Bankruptcy") against Mr. Lee in the HK High Court based on Mr. Lee's failure to pay these court orders for costs and the Allocatur Order.[79] Mr. Tang and Ms. Hou were acting as creditors in connection with the Lee 2023 Bankruptcy, despite continuing to act as trustees in the Lee 2001 Bankruptcy.[80]

In June of 2023, Jiao Wen (hereinafter "Ms. Wen"), a former ex-girlfriend of Mr. Lee with whom he allegedly shares multiple children, approached Mr. Tang in Houston claiming to have information as to Mr. Lee's corporate activities with **[*18]** respect to the Roy Group and Lion Legend.[81] Sometime during their meetings in 2023 and subsequent communications, Mr. Tang allegedly offered Ms. Wen 33% of the assets he might recover from Mr. Lee in the Lee 2001 Bankruptcy in exchange for providing information and documents related to Mr. Lee, the Roy Group, and Lion Legend.[82]

On October 17, 2024, Judge Jonathan Harris of the HK High Court dismissed an action Mr.

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[71] *Id.* at 23 ¶ 11.2.

[72] *Id.*

[73] *Id.* at 13-14 ¶¶ 7.3, 7.4; *see also* ECF No. 56-3.

[74] ECF No. 54-29, at 14 ¶ 7.5.

[75] ECF No. 54-8, 54-9, 54-10.

[76] ECF 54-19, at 2.

[77] ECF 54-23.

[78] ECF 68-12.

[79] ECF 68-3.

[80] *Id.*

[81] ECF No. 54-29, at 28 ¶ 14.1, 30 ¶ 14.5.

[82] *Wen Trial Testimony*, ECF No. 154 at 191 ¶¶ 2-5. Mr. Tang, however, testified he did not offer Ms. Wen any financial support in connection with her participation in this case. *Tang Trial Testimony*, ECF No. 154 at 5 ¶ 22. No written evidence of any such offers to Ms. Wen were admitted into evidence. Rather, Ms. Wen's testimony goes to Mr. Tang's credibility and the weight of his testimony.

Tang filed against Mr. Benjamin Li, which claimed he owed the Siu-Fung Group $1 million plus interest based on an allegedly 25 year old loan agreement.[83] On January 21, 2025, Judge Harris issued an opinion as to why the HK High Court dismissed Mr. Tang's claim, finding *inter alia* (i) Mr. Tang had failed to comply with his discovery obligations in connection with litigating his claim, (ii) Mr. Tang had made the "commercial decision" to neglect a substantive review of 350 boxes of files of KMPG records retained from 2001 to 2016 during his absence as joint liquidator because he lacked the funding to do so, and (iii) based on Mr. Tang's failure to review the 350 boxes of files at his disposal, Mr. Tang had lied to the court when he submitted an **[*19]** affirmation stating "[the Siu-Fung Group may have had custody of documents relating to its financial statement and management accounts from 1992 to 1999, which were subsequently lost following the Group's liquidation in 2000]."[84] Mr. Tang appealed the Judge Harris decision, and that appeal is pending.[85]

On January 28, 2025, Judge Phoebe Man of the HK High Court issued an order compelling Sujida to provide the FRs with discovery and submit to an examination in connection with the Lee 2001 Bankruptcy.[86] Judge Man's order incorporated the factual record laid out by Justice Lam in his 2016 decision regarding the potentially suspicious nature of the BSW Sale and corporate history of the Roy Group, and reiterates the HK High Court's suspicions regarding Mr. Lee's corporate activities over the last thirty years.[87] Given Sujida was not named in the Lam S29 Orders, this apparently provided a justification for Mr. Lee to place greater reliance on her in connection with his alleged machinations—as evidenced by her subsequent ownership and management of the Roy Group, HSI, and Hi Scene—which Judge Man believed necessitated a further examination of Sujida.[88] On May 15, 2025, Sujida responded to the Judge **[*20]** Man's discovery order, detailing her knowledge of and involvement with BSW, Goldsmith, HSI, Hi Scene, Lion Legend, the Roy Group, and Shine Eagle, as well as Mr. Lee's corporate activities over the last thirty years.[89]

II. Procedural Background.

On July 19, 2024, the FRs filed the above captioned Chapter 15 Petition for Recognition of Foreign Proceeding (hereinafter the "Petition for Recognition").[90] On the same day, the FRs filed the Verified Petition Pursuant to *11 U.S.C. §§ 105(a)*, *1504*, *1507*, *1509*, *1515*, *1517*, *1519*, *1521*, and *1525* for Entry of an Order Recognizing Foreign Proceedings and Granting Provisional Relief (Discovery) (hereinafter the "Verified Petition"), seeking recognition of the Siu-Fung Group liquidation proceedings, the Lee 2001 Bankruptcy, and the Lee 2023 Bankruptcy.[91]

On September 19, 2024, Mr. Lee filed the Motion to Dismiss under *Rule 12(b)* and Response to Notice of Hearing, or in the Alternative, Motion to Stay Pending Plaintiff's California Lawsuit (hereinafter the "Motion to Dismiss").[92] On January 15, 2025, Mr. Lee filed a Motion to Amend his Motion to

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[83] ECF 55-11.

[84] *Id.*

[85] ECF No. 86.

[86] ECF No. 56-3.

[87] *Id.*

[88] *Id.*

[89] ECF No. 118-2.

[90] ECF No. 1.

[91] ECF No. 2.

[92] ECF No. 18.

Dismiss.[93] On January 27, 2025 the Court entered the Order Granting Leave to File Amended Motion to Dismiss.[94] The same day, Mr. Lee filed the Amended Motion to Dismiss for **[*21]** Other Causes (hereinafter the "Amended Motion to Dismiss").[95] On February 2, 2025, the California Court granted a motion for summary judgment Mr. Tang and Ms. Hou had filed in the California Lawsuit, thereby domesticating as foreign judgments the HK High Court orders for cost and Allocatur Orders against Mr. Lee.[96] Accordingly, Mr. Lee's Motion to Stay Pending Plaintiff's California Lawsuit has been mooted.

On November 7, 2024, the FRs filed the Motion to Compel Production of Documents and Information from Ms. Wen (hereinafter the "Motion to Compel").[97]

On February 10, 2025, a ten-day long trial commenced, spanning across seven and a half months, during which approximately 350 exhibits were admitted, and extensive testimony was adduced from Messrs. Tang and Lee.[98] Expert testimony as to Hong Kong law was also adduced from the FRs' expert witness Kingsley Ong (hereinafter "Mr. Ong") and Mr. Lee's expert witness Alex Cheng (hereinafter "Mr. Cheng").[99] Testimony was also adduced from Ms. Wen.[100]

On April 9, 2025, Mr. Tang arranged a wire transfer of $1,200 to his attorneys at Archer & Greiner, PC, (hereinafter "Archer") to be held as a security retainer on behalf of the Siu-Fung Group (hereinafter the **[*22]** "Archer Retainer").[101] The Archer Retainer was thereafter deposited into Archer's IOLTA escrow account with Chase Bank in Houston, Texas.[102] On April 16, 2026, the FRs filed an Amendment to the Verified Petition (hereinafter the "Amended Verified Petition"), amending the Verified Petition to reflect their argument that the Archer Retainer transferred in early April satisfied *section 109(a) of the Bankruptcy Code*.[103] On April 23, 2025, the FRs filed the Motion for Leave to File Motion for Partial Summary Judgment as to the *11 U.S.C. § 109* Jurisdictional Issue Raised by the Court as to the Corporate Debtors' Chapter 15 Petition Based Upon Amendment to the Petition and Request for Continuance of Debtor Lee's Trial Testimony Until the *11 U.S.C. § 109* Jurisdictional Issue Has Been Adjudicated (hereinafter the "Motion for Leave").[104] On May 19, 2025, the Court entered an Order on Scheduling of the Motion to File Partial Summary Judgment, stating it will consider the Motion for Leave and substantive issues surrounding the applicability of *Bankruptcy Code section 109(a)* to Chapter 15 at the conclusion of the Hearing on recognition along with all matters.[105]

On September 30, 2025, over a year after the original Verified Petition was filed, the Parties presented closing arguments.[106] At **[*23]** the conclusion of the hearing the Court took the Amended Verified Petition and related Amended Motion to Dismiss and Motion for

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[93] ECF No. 36.

[94] ECF No. 40.

[95] ECF No. 41.

[96] ECF No. 68-12.

[97] ECF No. 25.

[98] ECF No. 63; ECF No. 64.

[99] ECF No. 139; ECF No. 144.

[100] ECF No. 88.

[101] ECF No. 97-1, at 3 ¶ 5.

[102] *Id.* at ¶ 6.

[103] *See generally id.*

[104] ECF No. 98.

[105] ECF No. 115.

[106] ECF No. 168.

Leave under advisement.[107]

JURISDICTION

28 U.S.C. § 1334 provides the District Courts with jurisdiction over this proceeding. 28 U.S.C. § 157(b)(1) states "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title." This Court has jurisdiction over this proceeding as it is a core proceeding the Court can consider under 28 U.S.C. § 157(b)(2)(P). This proceeding has been referred to the Bankruptcy Court under General Order 2012-6. The Court has constitutional authority to enter final orders and judgments. Stern v. Marshall, 564 U.S. 462, 486-87, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011). Venue is proper in this District pursuant to 28 U.S.C. § 1408.

LEGAL STANDARD

I. Chapter 15 Statutory Provisions.

Congress enacted Chapter 15 of the Bankruptcy Code as part of the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Pub.L. No. 109-8, 119 Stat. 23* [hereinafter "BAPCPA"]. The stated purpose of Chapter 15 "is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency."[108] 11 U.S.C. § 1501(a). The express objective of Chapter 15 is to promote

> (1) cooperation between— **[*24]**
>
> (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
>
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
>
> (2) greater legal certainty for trade and investment;
>
> (3) fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor;
>
> (4) protection and maximization of the value of the debtor's assets; and
>
> (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501(a)(1)-(5).

Generally, getting "recognition" of the foreign proceeding under sections 1515 and 1517(a) of the Bankruptcy Code is the first step in obtaining relief under Chapter 15. SPhinX-Bankruptcy, 351 B.R. at 115. "Recognition" under section 1502(7) "means entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter." 11 U.S.C. § 1502(7). Pursuant to section 1509, "[a] foreign representative may commence a case under section 1504 by filing directly with the court a

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[107] *Id.*

[108] The "Model Law" within the meaning of 11 U.S.C. § 1501 is a "reference to the Model Law promulgated by the United Nations Commission on International Trade Law [(hereinafter "UNCITRAL")] at its Thirtieth Session on May 12-30, 1997, UN Sales No. E.99V.3. *See* In re SPhinX, Ltd, 351 B.R. 103, 112, n. 11 (Bankr. S.D.N.Y. 2006) (hereinafter "*SPhinX-Bankruptcy*"); *see also* H.R. Rep. 109-31, pt. 1, 109th Cong., 1st Sess., U.S. Code Cong. & Admin. News 2005, pp.88, 105-107 (2005) [hereinafter the "House Report"].

petition for recognition of a foreign proceeding under section 1515." 11 U.S.C. § 1509.

A petition for recognition filed by a foreign representative, properly filed under section 1515 and submitted **[*25]** with certain requisite evidentiary documents, is evaluated under section 1517. In re Geden Holdings, Ltd., No. 25-90138, 2025 Bankr. LEXIS 2117, 2025 WL 2484883 at *2 (Bankr. S.D. Tex. August 28, 2025); In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd. (In re Provisional Liquidation), 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) [hereinafter "*Bear Stearns-Bankruptcy*"]. Section 1517 provides, in relevant part

> (a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
>
> > (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;
> >
> > (2) the foreign representative applying for recognition is a person or body; and
> >
> > (3) the petition meets the requirements of section 1515.
>
> (b) Such foreign proceeding shall be recognized—
>
> > (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or
> >
> > (2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

11 U.S.C. § 1517(a)-(b).

Recognition under section 1517 is subject to the public policy exception under Bankruptcy Code section 1506, which states "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. Section 1506 has been "narrowly interpreted, as the word 'manifestly' in international usage restricts the **[*26]** public policy exception to the most fundamental policies of the United States.'" House Report at 172; Lavie v. Ran (In re Ran), 607 F.3d 1017, 1021 (5th Cir. 2010) [hereinafter "*Ran-Circuit*"].

The word "shall" in section 1517(a) makes recognition mandatory in instances where the requirements of section 1517 have been satisfied and there is no public policy basis under section 1506 to deny it. In re Black Gold S.A.R.L., 635 B.R. 517, 526 (9th Cir. BAP 2022); In re ABC Learning Ctrs. Ltd., 728 F.3d 301, 306-309 (3rd Cir. 2013); *In re PT Bakrie Telecom Tbk, 628 B.R. 859, 870 (Bankr. S.D.N.Y. 2021)*; In re Creative Fin. Ltd., 543 B.R. 498, 514 (Bankr. S.D.N.Y. 2016); In re Millard, 501 B.R. 644, 653-54 (Bankr. S.D.N.Y. 2013). The foreign representative bears the burden of proof for the requirements of section 1517. *See* Ran-Circuit, 607 F.3d at 1021 (citing In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 389 B.R. 325, 334 (S.D.N.Y. 2008) [hereinafter "*Bear Stearns-District*"].

A. Foreign Main Proceeding.

Under section 1502(4), a "'foreign main proceeding' means a foreign proceeding pending in the country where the debtor has the center of its main interest," also referred to as the debtor's "COMI." 11 U.S.C. § 1502(4). Ran-Circuit, 607 F.3d at 1022 (denying foreign main recognition because debtor's COMI was not in jurisdiction where foreign proceeding

was taking place); *In re Modern Land (China) Co., Ltd., 641 B.R. 768, 781 (Bankr. S.D.N.Y. 2022)* (recognizing foreign main proceeding); *In re Ocean Rig UDW, Inc., 570 B.R. 687, 702 (Bankr. S.D.N.Y. 2017)* (recognizing foreign main proceeding); *see also Morning Mist Holdings, Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 138 (2d Cir. 2013)* [hereinafter "*Fairfield Sentry-Circuit*"] (discussing the origin of COMI). While COMI is not necessarily defined under the Bankruptcy Code, *section 1516(c)* establishes that the "debtor's registered office, or habitual residence in the case of an individual, is presumed to be the [debtor's COMI]." *11 U.S.C. § 1516(c)*.

The statutory presumption under *section 1516(c)* is rebuttable in the presence of evidence **[*27]** to the contrary. *Id.*; *Bear Stearns-District, 389 B.R. at 336* (noting the COMI presumption may be overcome, particularly in the case of a "letterbox company"); *see also SPhinX-Bankruptcy, 351 B.R. at 118* (interpreting COMI in context of its international origin). Factors courts consider in determining whether the COMI presumption has been overcome include

> the location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of a majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

SPhinX-Bankruptcy, 351 B.R. at 117.

> Factors that are useful in instances where the debtor is an individual include: the location of the debtor's primary assets; the location of a majority of the debtor's creditors or a majority of creditors [who] would be affected by the case; and the jurisdiction whose law would apply to most disputes.

In re Loy, 380 B.R. 154, 162 (Bankr. E.D. Va. 2007). As explained by the *SPhinX-Bankruptcy* court, "the flexibility inherent in Chapter 15 strongly suggests" courts should not apply these factors "mechanically," but rather should view them "in light of Chapter 15's emphasis **[*28]** on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor's value." *SPhinX-Bankruptcy, 351 B.R. at 117*.

The Fifth Circuit found it "important that the debtor's COMI be ascertainable by third parties."[109] *Ran-Circuit, 607 F.3d at 1025*. Other courts have generally held that "COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties. Among other factors that may be considered are the location of headquarters,

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[109] In *In re Ran*, the Bankruptcy Court for the Southern District of Texas acknowledged that under *section 1508 of the Bankruptcy Code*, courts are required to consider Chapter 15's "international origin, and the need to promote an application [of Chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." *In re Ran, 390 B.R. 257, 264 (Bankr. S.D. Tex. 2008)* [hereinafter "*Ran-Bankruptcy*"]. The legislative history of Chapter 15 points to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (hereinafter the "Guide to Enactment") "for guidance as to the meaning and purpose of [Chapter 15's] provisions." House Report at 106 n. 101. While the Guide to Enactment does not define COMI, it indicates the concept was taken from the European Union Convention on Insolvency Proceedings (hereinafter the "EU Convention"). *See* UNCITRAL Guide ¶¶ 31, 72. "In turn, the European Union Council Regulation enacting the Convention on Insolvency Proceedings provides some guidance: 'The centre of main interests should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.'" Council Regulation (EC) No. 1346/2000 of 29 May 2000, Preamble ¶ 13 [hereinafter the "EU Regulation"]. *Fairfield Sentry-Circuit, 714 F.3d at 136*; *see also Ran-Bankruptcy, 390 B.R. at 264* (discussing the EU Regulation).

decision-makers, assets, creditors, and the law applicable to most disputes." *Fairfield Sentry-Circuit, 714 F.3d at 130*. Stated another way, in determining a debtor's COMI, courts often examine whether the purported COMI would have been ascertainable to interested third parties. *See In re Modern Land, 641 B.R. at 782* (citing *Fairfield Sentry-Circuit, 714 F.3d at 130*; *In re British Am. Ins. Co., 425 B.R. at 912* ("The location of a debtor's COMI should be readily ascertainable by third parties."); *In re Betcorp Ltd., 400 B.R. 266, 289 (Bankr. D. Nev. 2009)* (considering ascertainability of COMI by creditors in reaching determination of debtor's COMI)). "By examining factors 'in the public domain,' courts are readily able to determine whether a debtor's COMI is in fact 'regular and ascertainable and not easily subject to tactical removal.'" *Id.*

Because *section 1502(4)* defines foreign main proceeding in the present sense ("'foreign **[*29]** main proceeding' means a foreign proceeding pending in the country where the debtor *has* [its COMI]"), courts are generally required to view the COMI determination in the present. *Ran-Circuit, 607 F.3d at 1025*. Accordingly, "a debtor's COMI should be determined based on its activities at or around the time the Chapter 15 petition is filed," rather than the time the foreign proceeding was initiated; consideration of the debtor's entire operational history is not the proper inquiry. *See id.* (citing *Fairfield Sentry-Circuit, 714 F.3d at 137*). "To offset a debtor's ability to manipulate its COMI" in bad faith, however, "a court may also look at the time period between the initiation of the foreign liquidation proceeding and the filing of the Chapter 15 petition."[110] *Fairfield Sentry-Circuit, 714 F.3d at 133*.

B. Foreign Nonmain Proceeding.

Under *section 1502(5)*, a "'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment." *11 U.S.C. § 1502(5)*. Under *section 1502(2)*, an "'establishment' means any place of operations where the debtor carries out a nontransitory economic activity." *Id.* Therefore, in order to conclude a debtor has an establishment in a particular location, the Court must find the debtor both (i) has a place of operations in the **[*30]** particular location, and (ii) had been carrying on nontransitory economic activity there at the time the foreign representative brought the petition for recognition in the United States. *Ran-Circuit, 607 F.3d at 1026*.

While a "place of operations" is not defined under the Bankruptcy Code, the Fifth Circuit noted that "in order to have a 'place of operations' within the definition of establishment, the debtor "must have had 'a place from which economic activities are exercised on the market (i.e. externally)" at the time the foreign representative filed the petition

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[110] *See Ocean Rig UDW Inc, 570 B.R. at 707* (granting foreign main recognition and finding COMI not manipulated in bad faith); *In re Sunac China Holdings, Ltd., 656 B.R. 715, 730-31 (Bankr. S.D.N.Y. 2024)* (granting foreign main recognition and finding debtor had not "shifted" its COMI in bad faith by choosing Hong Kong as the locus of its restructuring because "Hong Kong was the center of the debtor's business activities not only when it filed its Hong Kong restructuring case, but before that time as well—indeed throughout its entire existence"); *In re Modern Land, 641 B.R. at 793* (granting foreign main recognition and finding debtor had not engaged in COMI-shifting behavior); *In re Suntech Power Holdings Co., Ltd., 520 B.R. 399, 420 (Bankr. S.D.N.Y. 2014)* (granting foreign main recognition and finding joint provisional liquidators did not manipulate debtor's COMI, as the "activities they undertook that had the effect of establishing the debtor's COMI in the Cayman Islands were consistent with their duties as joint provisional liquidators in the[f]oreign [p]roceeding"); *see also* ***In re Pirogova, 593 B.R. 402, 414-15 (Bankr. S.D.N.Y. 2018)*** (finding individual debtor's past conduct not a factor the court was required to consider in evaluating whether a Russian Insolvency Proceeding can be recognized as a foreign main proceeding).

for recognition. Id. at 1027. Moreover, the "the mere presence of assets in a given location does not, by itself, constitute a place of operation." *Id.* Similarly, another court noted that "the terms 'operations' and 'economic activity' require showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just maintenance of property." In re Brit. Am. Ins. Co. Ltd., 425 B.R. 884, 915 (Bankr. S.D. Fla. 2010).

"In the context of corporate debtors, there must be a place of business for there to be an establishment." Ran-Circuit, 607 F.3d at 1027 (citing Bear Stearns-Bankruptcy, 374 B.R. at 131). In the context of an individual debtor, by "equating a corporation's principal place of business to an individual's primary or habitual residence," the Fifth Circuit **[*31]** posited that "a place of business could conceivably align with [an individual] debtor having a secondary residence or possibly a place of employment in the country where the [foreign representative] claims the [debtor] has an establishment." *Id.*

Similar to a determination of COMI, the use of the present tense in the definitions of foreign nonmain proceeding and establishment supports the conclusion that a court's establishment analysis "should focus on whether the debtor has an establishment in the foreign country where the bankruptcy is pending at the time the foreign representative files the petition for recognition under Chapter 15."[111] Id. at 1027. In contrast to COMI, "the existence of an establishment is essentially a factual question, with no presumption in its favor." Id. at 1026 (citing Bear Stearns-District, 389 B.R. at 338). Courts have noted that the "bar is rather high" to prove that a debtor has an establishment in a particular location. *Id.* (citing Bear Stearns-Bankruptcy, 374 B.R. at 131).

II. *Section 109(a) of the Bankruptcy Code*.

As mentioned *supra*, during trial the issue arose as to whether the Siu-Fung Group Debtors qualified to be a debtor under section 109(a) of the Bankruptcy Code.[112] While the Fifth Circuit has repeatedly described the standard for recognition under 1517 without mention of section 109(a), the court has not yet confronted the issue **[*32]** of whether, as a condition of receiving recognition, a foreign representative must demonstrate the debtor subject to the foreign proceeding may qualify to be a debtor under section 109(a).[113] Based on the circumstances of the case and the arguments raised by Mr. Lee and the FRs, however, this Court finds answering that question inescapable.[114]

While the text of Code is simple, the issue before the Court has demonstrated itself to be contentious, both across United States Circuit Courts as well as the international insolvency

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[111] Moreover, when evaluating establishment, courts generally do not conduct an "establishment-shifting" analysis as is done with COMI. *See id.* (determining establishment without analyzing whether debtor manipulated purported establishment in bad faith).

[112] *See* ECF No. 98 (moving for summary judgment on issue of whether section 109(a) of the Bankruptcy Code applies to the current proceeding and/or was satisfied).

[113] *See* In re Condor Ins. Ltd., 601 F.3d 319, 322 (5th Cir. 2010); Ran-Circuit, 607 F.3d at 1020-21; In re Vitro S.A.B. de CV, 701 F.3d 1031, 1045 (5th Cir. 2012).

[114] As laid out *infra*, the Court's determination of whether section 109(a) applies to Chapter 15 would be case dispositive on the Petition for Recognition with respect to the Siu-Fung Group liquidation proceedings. Both Parties in their respective motions regarding the FRs' Motion for Summary Judgment, as well as their closing briefs, acknowledge that the Court's determination of whether section 109(a) applies, and if so, whether that section was satisfied, may be case dispositive. Both Parties in their respective filings have asked the Court to advise on whether that section applies.

community.[115]

A. Plain Meaning.

The Court's statutory interpretation "begins and, if possible, ends with the language of the statute." *Trout Point Lodge, Ltd. v. Handshoe, 729 F.3d 481, 486 (5th Cir. 2013)* (citing *Lamie v. U.S. Tr., 540 U.S. 526, 534, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004)*). The "first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co., 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997)*. The Court's "inquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" *See id.* (citing *U.S. v. Ron Pair Enters. Inc., 489 U.S. 235, 240, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989)*). When the language is plain, this Court "must enforce the statute's plain **[*33]** meaning, unless absurd." *In re Nowlin, 576 F.3d 258, 261-62 (5th Cir. 2009)*. "An absurdity is not mere oddity. The absurdity bar is high, as it should be. The result must be preposterous, one that 'no reasonable person could intend.'" *See Texas Brine Co. L.L.C. v. Am. Arbitration Assoc., Inc., 955 F.3d 482, 486 (5th Cir. 2020)* (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 237 (2012)).

The court in *Barnet* analyzed the plain meaning of *sections 109(a)* and *103(a)* succinctly, and this Court need not reinvent the wheel to arrive at the same conclusion that the text of the Code on its face unambiguously states *section 109(a)* applies to Chapter 15:

> *[s]ection 103(a)* makes all of Chapter 1 applicable to Chapter 15. *Section 109(a)*—within Chapter 1—creates a requirement that must be met for any debtor. Chapter 15 governs the recognition of foreign proceedings, which are defined as proceedings in which "the assets and affairs of the debtor are subject to control or supervision by a foreign court." *11 U.S.C. § 101(23)*. The debtor that is the subject of the foreign proceeding, therefore, must meet the requirements of *section 109(a)* before a bankruptcy court may grant recognition of a foreign proceeding.

In re Barnet, 737 F.3d at 247.

The definitions of "debtor" under Chapter 15 and the debtor eligibility requirement under *section 109(a)* are reconcilable and not subject to ambiguity. The context and purpose of *section 109(a)* and Chapter 15 further assure **[*34]** the Court *section 109(a)* applies as a precondition to recognition. Imposing the low-bar eligibility requirement cabined in *section 109(a)* is not one "no reasonable person could [have] intend[ed]." *See Texas Brine, 955 F.3d at 486*; *In re B.C.I. Fins. Pty Ltd., 671 B.R. 669, 676 (Bankr. S.D.N.Y. 2025)* (rejecting argument application of *section 109(a)* resulted in an absurdity). The Model Law and Guide to Enactment are not dispositive on the issue, but rather expressly contemplate the modification or omission of certain provisions by member-States.[116] Ultimately, this Court is not in a position to second-guess the decision Congress made in

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[115] *See In re Barnet, 737 F.3d 238, 251 (2d Cir. 2013)* (holding *section 109(a)* applies to Chapter 15); *In re Al Zawawi, 97 F.4th 1244, 1255 (11th Cir. 2024)* [hereinafter "*Al Zawawi-Circuit*"] (holding *section 109(a)* does not apply to Chapter 15); Donald Glosband & Jay Westbrook, *Chapter 15 Recognition in the U.S.: Is a Debtor "Presence" Required?*, 24 INT. INSOLV. REV. 28-56 (2015) [https://perma.cc/D59D-SPGM] (arguing *section 109(a)* should not apply as precondition to recognition); 8 RICHARD LEVIN & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 1501.03 (16th ed. rev.2025) (explaining applicability of *section 109(a)* to Chapter 15).

[116] *See supra* note 131.

drafting the language of the Code. BedRoc Ltd. v. United States, 541 U.S. 176, 183, 124 S. Ct. 1587, 158 L. Ed. 2d 338 (2004) ("The preeminent canon of statutory interpretation requires [the court] 'to presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" (quoting Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391, (1992)). Section 109(a) applies to Chapter 15, and accordingly the FRs must demonstrate that requirement is satisfied in order to get recognition of the Siu-Fung Group liquidation proceedings and Lee 2001 Bankruptcy.

(1) Interrelated Definitions.

The FRs attempt to resist this conclusion by arguing nothing within sections 1517(a) and 1515 require section 109(a) be satisfied in order for the Court to recognize the foreign proceeding.[117] The FRs' argument relies on the assumption that a foreign debtor never becomes **[*35]** a debtor "under [Title 11]" simply by virtue of a United States court granting recognition of a foreign proceeding. Based on this assumption, section 109(a)'s threshold eligibility requirement, which determines "[who] may be a debtor under [Title 11]," would not apply and need not be satisfied to get recognition under section 1517. 11 U.S.C. § 109(a).

While alluring, this argument fails to comport with a straightforward reading of the text. It is true section 1517(a) states the court "shall" grant recognition upon a showing that sections 1517(a)(1) through (a)(3) are satisfied. 11 U.S.C. § 1517(a)(1). To hold section 109(a) inapplicable, however, would ignore the express mandate of section 103(a) to apply Chapter 1 to Chapter 15. 11 U.S.C. § 103(a). Moreover, such an interpretation would ignore how interrelated terms under Chapter 15 and Chapter 1 are defined. As referred to in section 1517(a), both terms "foreign proceeding" and "foreign representative" are defined under Chapter 1, and both reference and rely on the term "debtor." 11 U.S.C. §§ 101(23), 101(24). Because both terms are defined under Chapter 1, "debtor" as used therein necessarily relies on the same term "debtor" as defined elsewhere in Chapter 1, namely section 101(13). 11 U.S.C. § 101(13). Section 101(13) states "the term 'debtor' means person or municipality concerning which a case under this title has been commenced." *Id.* Section 1504 provides that "a case under Chapter 15," **[*36]** (which is located within Title 11), "is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515." 11 U.S.C. § 1504. And to be a "debtor" under "this title" (*i.e.*, Title 11), section 109(a) mandates an eligibility requirement. 11 U.S.C. § 109(a). Section 1517 depends on the existence of said foreign proceeding and foreign representative, which in turn "expressly contemplates and impliedly depends on the existence of some related 'debtor,'" which, coming full circle, must qualify to be a "debtor under Title 11" by meeting a precondition set out in section 109(a).[118] *See* Al Zawawi-Circuit,

[117] ECF No. 151, at 60.

[118] The court in Barnet underwent a similar analysis relating to how relief may be granted under Chapter 15, arriving at a similar conclusion that "the ubiquitous references to a debtor in both Chapter 15 and the relevant definitions of Chapter 1 [] refer to a debtor under the title that contains both chapters." In re Barnet, 737 F.3d at 248. The court noted "both the automatic and discretionary relief provisions that accompany recognition of a foreign main proceeding are directed towards debtors. 11 U.S.C. § 1520(a) applies 11 U.S.C. §§ 361-63, 549 and 552 to 'the debtor,' 'the property of the debtor,' or 'an interest of the debtor in property,' as appropriate. Section 362, in turn, provides for *inter alia*, the stay of any 'proceeding against the debtor.' 11 U.S.C. § 362(a)(1); *see also* 11 U.S.C. § 552(a) (governing post-petition "property acquired by the estate or by the debtor"). The discretionary relief provisions follow the same pattern. *See* 11 U.S.C. § 1521 (providing for, *e.g.*, "entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the

97 F.4th at 1255-56 (Lagoa J., concurring).

The Court's focus is not on whether the language of the Code is subject to two reasonable interpretations regarding whether a foreign debtor becomes a debtor under Title 11 by virtue of a foreign representative filing a petition for recognition. Framing the issue in such a manner misconstrues the interpretative exercise the Court is tasked with and divines ambiguity into the Court's analysis where none should in fact exist. Regardless of whether the statutes provide clarity on this separate issue, this Court's task is to determine whether the Code is ambiguous as to whether section 109(a)'s eligibility requirement applies to Chapter **[*37]** 15. With respect to that discrete issue, the text is unambiguously clear: yes, section 109(a) applies to Chapter 15.

(2) "Debtor" Under Sections 1502(1) And 109(a) Are Reconcilable and Not Ambiguous.

The term "debtor" as defined under section 1502(1) is reconcilable with how the term is used under sections 101(13) and 109(a), and judges have previously articulated so in different ways.[119] Section 1502 defines a debtor "[f]or the purposes of this chapter" as "an entity that is the subject of a foreign proceeding." 11 U.S.C. § 1502. Assuming *arguendo* that the section 1502(1) definition of "debtor" blocked application of section 109(a) within Chapter 15, Judge Straub writing for the Barnet court noted that because section 1502's definition of "debtor" is limited to "this chapter,"—meaning Chapter 15—"it follows that the definitions of 'foreign proceeding' and 'foreign representative' which both occur within Chapter 1, would not be affected" by "debtor" also having been defined under section 1502(1). In re Barnet, 737 F.3d at 249. As before: because both "foreign proceeding" and "foreign representative" require a "debtor," the result is unavoidable that "section 109(a) [] must be satisfied in order to meet the requirements contained in Chapter 15 that rely upon those definitions." *Id.*

Judge Straub goes on to correctly note that the section 1502 definition of "debtor" does not, in fact, block application of **[*38]** section 109(a). *Id. at 249*. Sections 101(13) and 1502(1) both start with the phrase "the term 'debtor' means." 11 U.S.C. §§ 101(13), 1502(1). The effect is that the section 1502(1) definition supplants the section 101(13) definition for purposes of Chapter 15. *See* In re Barnet, 737 F.3d at 249 (quoting Groman v. Comm'r of Internal Revenue, 302 U.S. 82, 86, 58 S. Ct. 108, 82 L. Ed. 63, 193702 C.B. 286 (1937) ("When an exclusive definition is intended the word 'means' is employed."). Section 1502(1) would not, however, supplant the requirements for "a debtor under this title"—as laid out in section 109(a)—as that requirement is not expressly enumerated in the section 101(13) definition.

The FRs support their argument against application of section 109(a) with the United States Court of Appeals for the Eleventh Circuit's holding in *Al Zawawi-Circuit*.[120] The primary reason the *Al Zawawi-Circuit* court held section 109(a) inapplicable, however, was that the court there was bound by precedent which "suggested [] section 109(a) does not apply to cases ancillary to a foreign proceeding." Al Zawawi-Circuit, 97 F.4th at 1257 (Lagoa, J., concurring); *see also* In re Goerg, 844 F.2d 1562, 1568 (11th Cir. 1988).[121] *Al Zawawi-Circuit* is not binding

United States to the foreign representative," "staying execution against the debtor's assets," and "granting any additional relief that may be available to a trustee"). *Id.*

[119] In re Barnet, 737 F.3d at 248-49; Al Zawawi-Circuit, 94 F.4th at 1255-57 (Lagoa J., concurring).

[120] ECF No. 151, at 54-55.

[121] In 1988, in *In re Goerge*, the United States Court of

authority on this court, nor is the case on which it relies. Additionally, the majority opinion in *Al Zawawi-Circuit* expressly *agrees* with the *Barnet* court's plain meaning analysis of *section 109(a)* and only arrives at an alternative conclusion due to its adherence to the prior precedent rule. *Al Zawawi-Circuit, 97 F.4th at 1251-52, 1257* (Lagoa, J., concurring).

Judge Lagoa, who authored **[*39]** the majority opinion in *Al Zawawi-Circuit*, wrote a special concurrence where she rejected the notion that *section 1502(1)* and *section 109(a)* irreconcilably conflict. *Id. at 1255-57*. Again, *section 1502(1)* defines debtor for purposes of Chapter 15 to mean "an *entity* that is the subject of a foreign proceeding." *11 U.S.C. § 1502(1)*. *Section 109(a)* "limits debtors under Title 11 to '*person[s]* that reside [] or [have] a domicile, a place of business, or property in the United States' and '*municipalit[ies]*.'" *Al Zawawi-Circuit, at 1256* (Lagoa, J., concurring); *11 U.S.C. § 109(a)*. The term "debtor" under *section 101(13)* "means *person* or *municipality* concerning which a case under this title has been commenced." *11 U.S.C. § 101(13)*. "Entity" under *section 101(15)* "*includes* person, estate, trust, governmental unit, and United States trustee." *11 U.S.C. § 101(15)*. Because *section 1502(1)* pertains to "entit[ies]," which includes terms such as "estate[s], trust[s]," and certain kinds of "governmental unit[s]" expressly omitted from debtor eligibility under *section 109(a)*, one naturally spots a potential conflict where the "entity subject to the foreign proceeding" happens to be, perhaps, a decedent's estate subject to liquidation. The *Al Zawawi-Circuit* court was not, however, faced with an estate, nor a trust nor governmental unit. *Al Zawawi-Circuit, 97 F.4th at 1256* (Lagoa, J., concurring). And neither is this Court. Both the Siu-Fung Group Debtors and Mr. **[*40]** Lee would be "persons" under *section 101*. *11 U.S.C. § 101(41)*.

> And, with respect to persons, *[sections] 1502(1)* neither contains its own, contrary residency/property requirement, nor clearly spurns the possibility of any such requirement. Thus, as far as this case is concerned, *[sections] 1502(1)* and *[] 109(a)* can easily be read in harmony: *[section] 1502(1)* recognizes that persons can be debtors in Chapter 15 cases, and *[section] 109(a)* imposes a residency/property requirement that must be satisfied for a person to be qualified as a debtor.

See Al Zawawi-Circuit, 97 F.4th at 1256 (Lagoa, J., concurring) (citing SCALIA & GARNER, *supra* at 180 ("The provisions of a text should be interpreted in a way that renders them compatible, not contradictory.")). Similarly, this Court finds nothing ambiguous about how *section 1502(1)* provides a chapter-specific definition of debtor for purposes of Chapter 15, while *section 109(a)* simultaneously imposes a debtor eligibility requirement to be a debtor under the entirety of Title 11.

(3) Context and Purpose.

Appeals for the Eleventh Circuit was faced with the issue of whether, as a condition for a United States court to entertain jurisdiction under former *section 304 of the Bankruptcy Code*, an insolvent decedent's estate subject to liquidation proceedings in Germany needed to "fit under the then-applicable definition of foreign proceeding." *Al Zawawi-Circuit, 97 F.4th at 1259* (Tjoflat, J., concurring). *Section 304* was the predecessor to Chapter 15, pre-BAPCPA. *Id. at 1252*. The *In re Goerg* court held that the term "debtor" as used under former *section 304* incorporated the same "debtor" as was defined under applicable foreign law, and that a United States court has jurisdiction to consider a *section 304* petition so long as that said debtor qualifies for relief under applicable foreign law, and the foreign proceeding of which said debtor is subject to is "for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization." *See id. at 1253* (citing *In re Goerg, 844 F.2d at 1567-68*). The *Al Zawawi-Court* found the "then-applicable" definition of foreign proceeding under the pre-BAPCPA Code largely the same as the current version in the Code. *Id. at 1252*.

With the FRs main argument addressed, the Court moves on to a few limited points regarding the context and purpose of section 109(a) which supports its conclusion that section 109(a) applies to Chapter 15. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader **[*41]** context of the statute as a whole." Robinson, 519 U.S. at 341.

First, as the court in Barnet noted, Congress "amended section 103 to state that Chapter 1 applies to Chapter 15 at the same time [] it enacted Chapter 15," which "strongly supports the conclusion that Congress intended section 103(a) to mean what it says, namely that Chapter 1 applies to Chapter 15."[122] In re Barnet, 737 F.3d at 250. This Court agrees. Congress could have precluded the application of section 109(a) to Chapter 15 in a number of ways, including creating an express carveout under section 103(a) that section 109(a) would not apply as a precondition to recognition under section 1517; moving the pre-BAPCPA definitions of "foreign proceeding" and "foreign representative" out of section 101 and into section 1501; defining "debtor" under section 1502(1) in a manner that did not necessarily contemplate and rely on "debtor" as used in various other special terms defined under Chapter 1; or including an express limitation as to the applicability of section 109(a) under some provision in Chapter 15, as was done with section 109(b) under section 1501(c). None of this done, nor any alternative avenue provided for interpreting the plain meaning of the text—as drafted—to reflect a conclusion other than that section 109(a) applies.

Second, both the Barnet court as well as Judge Lagoa writing in concurrence for *Al Zawawi-Circuit* were unconvinced **[*42]** that application of section 109(a) would be inconsistent with section 1528[123] and the venue statute provided under 28 U.S.C. § 1410.[124] 11 U.S.C. § 1528; 28 U.S.C. 1410.

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[122] *See* ***BAPCPA, §§ 801-802***; *cf.* U.S. v. Battista, 575 F.3d 226, 234 (2d Cir. 2009) ("[W]hen two sections [] share the same purpose, the parallel provisions can, as a matter of general statutory construction, be interpreted to be *in pari materia*." (internal quotation marks omitted)).

[123] *Section 1528* states "[a]fter recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States." *11 U.S.C. § 1528*. Again, *section 109(a)* requires "a domicile, a place of business, or property in the United States" in order to be a debtor under Title 11. *11 U.S.C. 109(a)*. Under one possible reading, application of *section 109(a)*'s requirement to be a debtor under Title 11 might render part of *section 1528* superfluous. According to the *Barnet* court, however, "there is nothing contradictory nor disharmonious about applying *[s]ection 109(a)* to Chapter 15 and then further requiring that *[s]ection 1528* [be] met before a case under another chapter of Title 11 may be commenced." *In re Barnet, 737 F.3d at 250*. Moreover, Judge Lagoa noted that "there are potential cases where a debtor satisfies *[section] 109(a)* but not *[section] 1528*'s asset requirement," such as the case of "an individual debtor who might reside in the United States without personally owning any assets in the country," or "a municipal debtor [that] might not itself own any assets at all." *Al Zawawi-Circuit, 97 F.4th at 1256* (Lagoa, J., concurring). "In such cases, *[section] 1528*'s asset requirement certainly has an effect: it prohibits the commencement of a case under any other Chapter of [T]itle 11." *Id.*

[124] *28 U.S.C. § 1410* is the Chapter 15 venue statute, and provides "[a] case under *[C]hapter 15 of [T]itle 11* may be commenced in the district court of the United States for the district—(1) in which the debtor has its principal place of business or principal assets in the United States; (2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or (3) in a case other than those specified in *paragraph (1)* or *(2)*, in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative." *28 U.S.C. § 1410*. Under one potential reading, if *section 109(a)* was made applicable to Chapter 15, then "every debtor who satisfied *[section] 109(a)* necessarily will have a 'principal place of business or principal asset in the United States,' and [would] therefore satisfy *[section] 1410(1)*, rendering *subsections (2)* and *(3)* meaningless in all cases." *Al Zawawi-Circuit, 97 F.4th at 1257* (Lagoa, J., concurring). Similar to *section 1528*, however, Judge Lagoa noted that a debtor "might satisfy *[section] 109(a)* through residence or domicile in the United States but not have a principal place of business or principal

This Court agrees. "It is our duty 'to give effect, if possible, to every clause and word of a statute.'" *United States v. Menasche, 348 U.S. 528, 538-539, 75 S. Ct. 513, 99 L. Ed. 615 (1955)* (quoting *Montclair v. Ramsdell, 107 U.S. 147, 152, 2 S. Ct. 391, 27 L. Ed. 431 (1883)*); *see also Williams v. Taylor, 529 U.S. 362, 404, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)* (describing this rule as a "cardinal principle of statutory construction"); *Market Co. v. Hoffman, 101 U.S. 112, 115, 25 L. Ed. 782 (1879)* ("As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"). Neither *section 1528* nor *28 U.S.C. § 1410* are rendered superfluous by virtue of applying *section 109(a)* to Chapter 15.

Finally, the Court must consider whether application of *section 109(a)* is consistent with the purpose of Chapter 15, which as noted *supra*, "is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency."[125] *11 U.S.C. § 1501(a)*.[126] The court in *Barnet* found none of the express objectives laid out in *section 1501(a)* dispositive on the issue, "as they could all be accomplished with or without imposition of *[s]ection 109(a)*." *In re Barnet, 737 F.3d at 251*.

One court recently found that the manner in which courts have historically applied *section 109(a)* post-*Barnet* has been entirely consistent with the purpose of **[*43]** Chapter 15. *See In re B.C.I. Fins. Pty Ltd., 671 B.R. at 678*. *Section 109(a)* merely requires a debtor to have property in the United States; "it says nothing about the amount of such property nor does it direct that there be any inquiry into the circumstances surrounding the debtor's acquisition of the property." *In re Octaviar Admin. Pty Ltd, 511 B.R. 361, 373 (Bankr. S.D.N.Y. 2014)*. Accordingly, courts in the Second Circuit have routinely found *section 109(a)* satisfied where, pre-petition for recognition, a retainer is paid to counsel on behalf of the debtor and held in a United States bank account. *Id. at 373-75*; *see In re B.C.I. Fins. Pty Ltd., 583 B.R. 288, 293-94 (Bankr. S.D.N.Y. 2018)* (collecting cases). This is potentially a low bar. One so low that, as one court recently put, it could be "[surmounted] by virtually any well-counseled company in the world." *In re B.C.I. Fins Pty Ltd., 671 B.R. at 677-78*. Allowing debtors who otherwise have no property or presence in the United States to more easily file for recognition under Chapter 15 furthers the statutory objectives laid out in *section 1501*—"namely, cooperation between U.S. and foreign courts, fair and efficient cross-border administration, and maximization of the value of the debtor's assets." *Id. at 678*; *11 U.S.C. § 1501(a)(1)*, *(3)* & *(4)*.

B. *Section 1508*.

Generally, a court's statutory interpretation only leads to consideration of legislative history if the text is ambiguous. Here, the text

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property in the United States and therefore not satisfy *[section] 1410(1)*. In such cases, *[sections] 1410(2)* and *(3)* would come into play and determine where venue lies." *Id.*

Conversely, *sections 1410(2)* and *(3)* expressly provide venue for Chapter 15 cases even when "the debtor does not have a place of business or assets in the United States." *In re Barnet, 737 F.3d at 250*. Based on this, one might conclude *section 109(a)* was not meant to be applied to Chapter 15. *Id.* The *Barnet* court, however, characterized *section 1410* as "purely procedural," and reasoned that "allow[ing] the venue statute to control" whether *section 109(a)* applied to Chapter 15 over the "unambiguous [] substantive [] and restrictive language used in *[s]ections 103* and *109* "would be to allow the tail to wag the dog." *Id.*

[125] *See supra* note 108 and accompanying text.

[126] The express of objectives of Chapter 15 cabined in *section 1501(a)* are noted *supra*.

is not. Chapter 15, however, contains an express interpretation **[*44]** provision which mandates courts "consider [the chapter's] international origin, and the need to promote an application of [the chapter] that is consistent with the application of similar statues adopted by foreign jurisdictions." *11 U.S.C. § 1508*. As laid out *supra*, the legislative history of Chapter 15 points to the Guide to Enactment "for guidance as to the meaning and purpose of [Chapter 15's] provisions."[127] The *Barnet* court acknowledged that while "the Model Law does not contain an express requirement akin to *section 109(a)*," it also expressly leaves open the possibility that "a State may modify or leave out some of its provisions."[128] Accordingly, the Model Law does not provide clear or instructive guidance on the issue. "Regardless, the omission of *section 109(a)*, or its equivalent, from the Model Law does not suffice to outweigh the express language Congress used in adopting *sections 109(a)* and *103(a)*." *In re Barnet, 737 F.3d at 251*.

While the Fifth Circuit has repeatedly emphasized the need to rely on the Model Law and Guide to Enactment when interpreting Chapter 15,[129] the fact that the court has not yet considered whether *section 109(a)* is a precondition to recognition under *section 1517* is not dispositive on whether that section was meant to apply in accordance with the mandate of *section 103(a)*. Regardless, **[*45]** this Court's plain meaning analysis, as well as the analyses of the court in *Barnet* and Judge Lagoa's concurrence in *Al Zawawi-Circuit* demonstrate *section 109(a)* applies to Chapter 15 as a precondition to recognition.

[127] *See supra* note 108 and accompanying text; *see* House Report.

[128] *See* Guide to Enactment at Part 2 ¶ 12.

[129] *In re Condor Ins. Ltd., 601 F.3d at 321*; *Ran-Circuit, 607 F.3d at 1020-21*; *In re Vitro S.A.B. de CV, 701 F.3d at 1044*.

DISCUSSION

The FRs originally sought recognition for the Lee 2001 Bankruptcy, the Lee 2023 Bankruptcy, and the Siu-Fung Group liquidation proceedings.[130] Over the course of the ten-day trial, the Parties' arguments narrowed, along with the relief sought by the FRs, and by the time evidence closed the FRs only sought recognition of the Lee 2001 Bankruptcy and the Siu-Fung Group liquidation proceedings.[131] Mr. Lee opposed recognition of each proceeding from the start and continues to stand on his Amended Motion to Dismiss.[132]

For the reasons discussed below, the Court must deny recognition as to both the Siu-Fung Group liquidation proceedings, as well as the Lee 2001 Bankruptcy.

I. Siu-Fung Group Liquidation Proceedings.

With respect to the Siu-Fung Group liquidation proceedings, the FRs argue each of the requirements for recognition under *section 1517* are satisfied and ask the Court to recognize the liquidation as a foreign main proceeding.[133] With respect to *section 109(a)*, the FRs argue the Siu-Fung Group Debtors have two forms **[*46]** of assets in the United States sufficient to satisfy the debtor-eligibility requirement: (i) potential claims the Debtors allegedly have against Mr. Lee and third parties in the United States based on the allegedly fraudulent transfer of BSW assets before, during, and after the Siu-Fung Group liquidation proceedings (hereinafter the "Potential Claims") and (ii) the post-petition

[130] ECF No. 1; ECF No. 2; ECF No. 97.

[131] ECF No. 151.

[132] ECF No. 41; ECF No. 152.

[133] ECF No. 2 at 2.

Archer Retainer deposited by the FRs into Archer's client trust account on behalf of the Siu-Fung Group.[134]

Mr. Lee opposes recognition of the Siu-Fung Group liquidation proceedings on grounds that (i) the FRs have not proven the liquidation proceedings are foreign proceedings within the meaning of *section 101(23)*, and (ii) the FRs have not proven that any of the Siu-Fung Group Debtors had any assets in the United States at the time of the filing of the petition for recognition.[135]

The Court concludes that while the requirements of *section 1517* are otherwise satisfied and the Siu-Fung Group liquidation proceedings are foreign main proceedings, the FRs have failed to demonstrate the Siu-Fung Group Debtors had a presence in the United States at the time of the filing of the Chapter 15 petition, and therefore *section 109(a)* is not satisfied. Accordingly, the **[*47]** petition for recognition as to the Siu-Fung Group liquidation proceedings must be denied.

A. *Section 1517*.

***(1) The Liquidation Proceedings are Foreign Proceedings, and Messrs. Tang and Kan are Foreign Representatives*.**

The Court first notes the Siu-Fung Group liquidation proceedings constitute foreign proceedings within the meaning of *section 101(23)*. *11 U.S.C. § 101(23)*. A "foreign proceeding" under *section 101(23) of the Bankruptcy Code* means a "judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation." Courts have interpreted *section 101(23) of the Bankruptcy Code* as having the following seven requirements:

> (1) a proceeding;
>
> (2) that is either judicial or administrative;
>
> (3) that is collective in nature;
>
> (4) that is in a foreign country;
>
> (5) that is authorized or conducted under a law related to insolvency or the adjustment of debts;
>
> (6) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and
>
> (7) which is for the purpose of reorganization or liquidation.

See In re Betcorp Ltd., 400 B.R. at 277; *In re ABC Learning Ctrs. Ltd., 728 F.3d at 308*; *In re Gold & Honey, Ltd., 410 B.R. 357, 368, 369-70 (Bankr. E.D.N.Y. 2009)*; *In re Brit. Am. Ins. Co., 425 B.R. at 901-02*.

Each of the Siu-Fung Group Debtors are in active **[*48]** liquidation proceedings in Hong Kong before the HK High Court, subject to adjudication under Hong Kong Law, specifically Chapter 32 of the Hong Kong Bankruptcy Ordinance, also referred to as the Companies Winding Up and Miscellaneous Provisions Ordinance (also referred to as "CWUMPO"), which governs the winding up of companies in Hong Kong.[136] Prongs (1), (2), (4), (5), and (7) of the *Betcorp* test are therefore satisfied. *In re Betcorp Ltd., 400 B.R. at 277*.

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[134] ECF No. 151 at 62.

[135] ECF No. 152, at 15, 19.

[136] *Tang Trial Testimony*, ECF No. 75, at 75 ¶¶ 17-22.

The term "collective" within the definition of foreign proceeding means the proceeding is "one that considers the rights and obligations of all creditors." *See* In re Ashapura Minechem Ltd., 480 B.R. 129, 136 (Bankr. S.D.N.Y. 2012) (quoting In re Betcorp Ltd., 400 B.R. at 276-77; In re Brit. Am. Ins. Co., 425 B.R. at 902 ("For a proceeding to be collective within the meaning of section 101(23), it must be instituted for the benefit of creditors generally rather than for a single creditor or class of creditors."). The Siu-Fung Group liquidation proceedings evidently provided creditors notice, permitted secured and unsecured creditors alike to file claims and potentially received distributions, held creditors meetings, and granted voting rights to creditors with respect to certain aspects of those proceedings.[137] That the majority of creditors have yet to receive a distribution in those proceedings does not render them **[*49]** not collective within the meaning of section 101(23). *See* ABC Learning Ctrs. Ltd., 445 B.R. 318 (ruling Australian liquidation proceeding collective because *inter alia* the proceeding entitled creditors to a meaningful claims process, even if those creditors would not receive meaningful distributions). Prong (3) of the Betcorp test is therefore satisfied. In re Betcorp Ltd., 400 B.R. at 277.

As part of their liquidation proceedings, all assets and liabilities of the Siu-Fung Group Debtors were subject to the control or supervision of the HK High Court, as overseen by Messrs. Tang and Tam as joint-liquidators in 2000, and then Messrs. Tang and Kan in 2016. Accordingly, prong (6) of the Betcorp test, along with all (7) other prongs, are satisfied. In re Betcorp, 400 B.R. at 277.

The Court next notes that Messrs. Tang and Kan and Ms. Hou each meet the definition of foreign representatives under section 101(24). 11 U.S.C. § 101(24). A "foreign representative" under section 101(24) of the Bankruptcy Code means a "person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." *Id.* Messrs. Tang and Kan, and Ms. Hou each are persons under section 101(41) because each are individuals. 11 U.S.C. § 101(41). Messrs. Tang **[*50]** and Kan were authorized by the HK High Court to administer the liquidation of the Siu-Fung Group Debtors' assets in 2016. Mr. Tang and Ms. Hou were appointed as trustees to the Lee 2001 Bankruptcy, which constitutes a representative of such proceeding within the meaning of section 101(24). 11 U.S.C. § 101(24).

(2) The Siu-Fung Group Liquidation Proceedings Are Foreign Main Proceedings.

The Court recognizes Hong Kong as the Siu-Fung Group Debtors' COMI. As outlined above, a foreign main proceeding is a foreign proceeding "pending in the country where the debtor has its COMI." 11 U.S.C. § 1517(b)(1). The FRs assert the Siu-Fung Group Debtors' COMI is in Hong Kong and Mr. Lee does not dispute this.[138] Whether the requirements of section 1517 are satisfied is not, however, a "rubber stamp exercise." Ran-Circuit, 607 F.3d at 1021 (citing In re Basis Yield Alpha Fund (Master), 381 B.R. 37, 40 (Bankr. S.D.N.Y. 2008)). "Even in the absence of an objection,

[137] *Tang Trial Testimony*, ECF No. 75, at 31 ¶¶ 19-22, 40 ¶¶ 13-18, 56 ¶¶ 18-25, 66 ¶¶ 4-6, 75 ¶¶ 1-12, 77 at 17-18, 80 ¶¶ 16-20, 93 ¶¶ 15-20. Another court in the United States recently found a bankruptcy proceeding before the HK High Court to be "collective" within the meaning of section 101(23). *See* In re Sunac China Holdings, Ltd., 656 B.R. at 719, n. 3 (restating court's previous bench ruling that HK High Court proceeding constituted a "foreign proceeding" within the meaning of section 101(23)).

[138] ECF No. 151, at 34.

courts must undertake their own jurisdictional analysis and grant or deny recognition under Chapter 15 as the facts of each case warrant." *Id.* (citing *Bear Stearns-District, 389 B.R. at 335*). In doing so, the Court may "consider any and all relevant facts (including facts not yet presented) . . . ." *In re Geden Holdings, Ltd., 2025 Bankr. LEXIS 2117, 2025 WL at *5* (citing *Basis Yield Alpha Fund (Master), 381 B.R. at 40*).

"COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties." *See In re Sunac China Holdings, Ltd., 656 B.R. at 729-30* (quoting *Fairfield Sentry-Circuit, 714 F.3d at 130*)). Because of **[*51]** the statutory presumption under *section 1516(c)*, creditors could reasonably have concluded that each of the Siu-Fung Group Debtors' (besides SFCCC) registered offices in Hong Kong was their COMI.[139] *In re Modern Land (China) Co., Ltd., 641 B.R. at 789*.

Each of the Siu-Fung Group Debtors are holding companies that have been in liquidation proceedings in Hong Kong since 2000. While those companies may have conducted different business activities between the years of their incorporation and eventual liquidation in 2000, for the last twenty-five years their primary business activities, if any, have centered around a potential restructuring and liquidation. *See In re Sunac China Holdings, Ltd., 656 B.R. at 730*. Such activities at one time included *inter alia* selling portions of the Siu-Fung Group's joint ventures, including the BSW Sale, in order for the purchaser to quickly relist them.[140] Later and more recently, those activities purportedly centered around recovering assets allegedly fraudulently transferred out of the Debtors' estate.[141] Such business activities, and the decision-making central to those activities, have evidently been conducted by the Siu-Fung Group joint-liquidators and interested third parties in Hong Kong before the HK High Court. Accordingly, because Hong Kong is the jurisdiction where **[*52]** the Siu-Fung Group has been regularly conducting its business activities as of the date of the filing of the petition for recognition, interested third parties would readily ascertain the Group's COMI laying there. *In re Sunac China Holdings, Ltd., 656 B.R. at 730* (holding Hong Kong was "the center of a restructuring [holding company's] business activities and decision-making" both at the time of the filing of the Chapter 15 petition "and during the time between its Hong Kong and [C]hapter 15 filings."). This is not a case of COMI shifting. *See Fairfield Sentry-Circuit, 714 F.3d at 133*.

Application of the *SPhinX* factors also supports a finding that COMI lays in Hong Kong. *SPhinX-Bankruptcy, 351 B.R. at 117*. Each of the Siu-Fung Group Debtors'—with the exception of SFCH and SFCCC—registered offices are in Hong Kong. Both SFCH and SFCCC have their principal place of business in Hong Kong. The Debtors are each subject to liquidation proceedings overseen by the HK High Court through joint-liquidators Mr. Tang and Mr. Kan. Mr. Tang and Mr. Kan are both employed by ShineWing Hong Kong, an accounting firm whose business address is listed in Hong Kong. The location of the Siu-Fung Group's primary assets is somewhat unclear—indeed, the location of those assets

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[139] ECF No. 2, Ex. 1-B. NHD Holdings, NHD Asia, and SFC each are Hong Kong incorporated companies, and each of their registered offices are in Hong Kong. SFCH was originally a Bermuda company, which was registered in Hong Kong under Chapter 32 in 1993, and its principal place of business was moved to Hong Kong shortly thereafter. SFCCC is a BVI company. SFCCC's registered office is a post office box in the BVI, and its principal place of business is in Hong Kong.

[140] *See supra* note 43 and accompanying text.

[141] *See supra* note 29.

is a purported basis for the current petition **[*53]** for recognition—and thus this factor is not dispositive. Given the previous size and scope of the companies as well as the limited evidence presented on the issue, it is not necessarily clear where a majority of the Siu-Fung Group's creditors exist.[142] Choice of law principles support a finding of COMI in Hong Kong. *Fairfield Sentry-Circuit, 714 F.3d at 130*. While Debtors within the Group may have been originally incorporated in different jurisdictions, as of the date of the Chapter 15 petition each were subject to Hong Kong law and Hong Kong regulations vis-à-vis the liquidation proceedings before the HK High Court.[143] Hong Kong is the jurisdiction whose law would apply to most disputes over corporate actions that take place in those liquidation proceedings. *In re Modern Land, 641 B.R. at 791*.

Accordingly, because the Siu-Fung Groups' COMI are all located in Hong Kong, the liquidation proceedings before the HK High Court are appropriately characterized as foreign main proceedings in satisfaction of *section 1517(a)(1)*. *11 U.S.C. § 1517(a)(1)*.

B. Debtor-Eligibility Under *Section 109(a)* is Not Satisfied.

(1) The Archer Retainer Does Not Satisfy Section 109(a).

The FRs argue the Archer Retainer deposited post-petition serves as a basis for satisfying the debtor eligibility requirement under *section 109(a)*.[144] The FRs claim that as of the date **[*54]** of the petition for recognition, they "did not believe they could use the [Siu-Fung Group Debtor's] funds on hand in accounts with the Hong Kong Official Receivers [] to pay a retainer to U.S. counsel."[145] According to the FRs, after learning the funds could so be used, on April 9, 2025, Mr. Tang wired the Archer Retainer to his counsel and sought reimbursement from the Hong Kong Official Receiver.[146] As such, the Archer Retainer ended up being paid nearly nine months after the date of the petition for recognition. The FRs, however, argue the Court should place "form over substance [*sic*]" and find the post-petition retainer constitutes property in the United States in satisfaction of *section 109(a)* because otherwise, the FRs "would be forced to spend substantial additional time and costs to file a second Chapter 15 Petition."[147]

Mr. Lee offers two objections to the retainer serving as a basis to satisfy *section 109(a)*. First, according to Mr. Lee, Mr. Tang paid the Archer Retainer of behalf of himself, the Siu-Fung Group Debtors are not represented by Archer, and there has been no showing that the money used for the Retainer belonged to any of the Siu-Fung Group Debtors or was ever sent by the Hong Kong Official Receiver **[*55]** to Mr. Tang out of the Siu-Fung Group Debtors' accounts.[148] Second, Mr. Lee argues that because debtor eligibility under *section 109(a)* is measured as of the date of the petition for recognition, a retainer paid nearly nine months after the date of the petition does not satisfy *section 109(a)*.[149]

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[142] Regardless, that many of those purported creditors evidently filed claims in the liquidation proceedings with the HK High Court indicates interested third parties readily ascertained Hong Kong as each of the Debtor's COMI. *See supra* note 137 and accompanying text.

[143] ECF No. 2, Ex. 1-B.

[144] ECF No. 151, at 62.

[145] *Id.* at 65; ECF No. 112-3; ECF No. 97, at ¶¶ 7, 10.

[146] ECF No. 97, at ¶¶ 8, 11.

[147] ECF No. 151, at 55-56.

[148] ECF No. 152, at 18, 20-21.

[149] *Id.* at 19.

Moreover, according to Mr. Lee, the FRs have no precedential basis to argue a post-petition retainer satisfies section 109(a) as no court which applies section 109(a) to Chapter 15 has previously held so.[150] The Court agrees with Mr. Lee's second argument.

Pursuant to section 109(a), in order to get a foreign proceeding recognized, the foreign representative must demonstrate the debtor has "a domicile, a place of business, or property in the United States." 11 U.S.C. § 109(a). With respect to the property requirement, the statute simply says the debtor must have property, but does not specify the amount of such property, nor does it direct an inquiry in the circumstances surrounding the debtor's acquisition of the property. In re Octaviar Admin. Pty Ltd., 511 B.R. at 373. As noted above, courts applying section 109(a) to Chapter 15 have routinely found an undrawn retainer in the possession of foreign representatives' counsel to constitute "property in the United States" sufficient to satisfy the debtor-eligibility requirement. Id. at 373-74; In re B.C.I. Fins. Pty Ltd., 583 B.R. at 293-94 (collecting **[*56]** cases). As Mr. Lee correctly points out, however, the use of the present tense in section 109(a) ("only a person that resides or *has*...property") requires that debtor-eligibility be measured as of the date of the filing of the petition for recognition.[151] 11 U.S.C. § 109(a). Stated another way, with respect to using an undrawn retainer to satisfy section 109(a), the foreign representative must deposit that retainer with counsel into a United States bank account before the petition for recognition is filed. *See* In re Barnet, 737 F.3d at 250; In re Octaviar Admin. Pty Ltd., 511 B.R. at 373.

Here, the retainer was paid to Archer on April 9, 2025, nearly nine months after the petition date. Therefore, the retainer cannot serve as a basis for satisfying section 109(a), because those funds were not property the Siu-Fung Group Debtors "ha[d]" in the United States at the time the petition for recognition was filed. 11 U.S.C. § 109(a). To hold otherwise would be counterintuitive. It would be illogical for the Court in one breath to hold section 109(a) imposes a debtor-eligibility requirement at the time the petition for recognition is filed, and in the same breath hold section 109(a) satisfied based on a retainer deposited months after the petition was filed.

Given the Archer Retainer cannot serve as a basis for satisfying section 109(a), the Parties' other arguments regarding whether Mr. **[*57]** Tang paid the Retainer on behalf of himself, and whether the FRs sufficiently proved those funds were authorized for use by the Hong Kong Official Receivers are moot and need not be addressed.

(2) The FRs' Potential Claims Do Not Satisfy Section 109(a).

The FRs argue their Potential Claims against Mr. Lee and third parties in the United States for allegedly fraudulent transfers of Siu-Fung Group and BSW assets constitute property in the United States sufficient to satisfy section 109(a).[152] According to the FRs, by demonstrating to this Court the underlying facts and nature of those claims, proving those claims have been "considered [] in concept" by the HK High Court, and proving the HK High Court has granted the FRs extended discovery of Mr. Lee and his family members in Hong Kong in relation to those claims, the FRs have satisfied some unarticulated "burden of proof" required to demonstrate those Potential Claims constitute property in the United

[150] *Id.* at 21.

[151] ECF No. 152, at 19.

[152] ECF No. 151, at 62.

States.[153] According to the FRs, "nothing more should be required for this Court to find that" the FRs' Potential Claims satisfy the property requirement under section 109(a).[154]

Mr. Lee objects to the FRs' Potential Claims serving as a basis to satisfy section 109(a). Mr. Lee attacks the validity **[*58]** of the FRs' purported Claims, arguing the FRs' allegations regarding such are false.[155] Mr. Lee correctly points out that to date no such claims have been filed in any court, and Mr. Tang has yet to show a court any such claims conclusively exist over the last 25 years.[156] According to Mr. Lee, the FRs have failed to state a claim under Fed. R. Civ. P. 12(b)(6).[157]

The Fifth Circuit has previously stated that claims and causes of action constitute "property" of the debtor despite being intangible. *See* In re Equinox Oil Co., Inc., 300 F.3d 614, 618 (5th Cir. 2002) (quoting *U.S. v. Whiting Pools, Inc.*, 462 198, 204-05 & n. 9 (1983) ("Section 541 is read broadly and is interpreted to 'include all kinds of property, including tangible or intangible property, [and] causes of action. . . .'")). The FRs are correct in stating that, in certain circumstances, courts applying section 109(a) to Chapter 15 have found the debtor-eligibility requirement satisfied based on the debtor having potential causes of action in the United States as of the date of the petition for recognition. In re Octaviar Admin. Pty Ltd, 511 B.R. at 372; In re Zawawi, 634 B.R. 11, 21 (Bankr. M.D.Fla. 2021) [hereinafter "*Al Zawawi-Bankruptcy*"). But the FRs' reliance on those cases is fundamentally misplaced for two interrelated reasons. First, the courts in those cases did not expressly articulate the burden of proof required to **[*59]** demonstrate that a potential cause of action exists as to satisfy the property requirement under section 109(a). Second, where those courts found that unarticulated burden of proof satisfied, such conclusions were based on facts too distinct from those found here to warrant the conclusion that section 109(a) is satisfied.

The court in *In re Octaviar* held a foreign debtor's potential causes of action against United States entities served as an independent basis for finding section 109(a)'s property requirement satisfied. In re Octaviar Admin. Pty Ltd, 511 B.R. at 369-70. There, the foreign representatives had previously filed a petition (hereinafter "Octaviar I") for recognition in which they expressly stated they were seeking recognition of an Australian liquidation proceeding "to investigate potential assets in the United States in the form of claims or causes of action against entities located [here] and, if necessary, to prosecute th[ose] assets in the United States."[158] Id. at 370. At the time the Octaviar I petition was filed, the foreign representatives had not yet filed any claims against entities in the United States on account of those potential causes of action. *Id.* The petition was granted, but the United States Court of Appeals for the Second Circuit reversed, on grounds that the Bankruptcy Court **[*60]** had failed to apply section 109(a) as a condition of receiving recognition. In re Barnet, 737 F.3d at 251.

Before filing a second petition for recognition, the foreign representatives commenced litigation against those entities in the United States District Court for the Southern District of New York and the New York Supreme Court asserting the same potential causes of action referred to in the Octaviar I petition. In re

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[153] *Id.*

[154] *Id.* at 63.

[155] ECF No. 152, at 18.

[156] *Id.*

[157] *Id.* at 14.

[158] *See also Octaviar I*, ECF No. 16, at ¶¶ 5, 16.

Octaviar Admin. Pty Ltd, 511 B.R. at 370. Afterwards, the foreign representatives filed a second petition for recognition (also referred to as "*Octaviar II*"). There, the Bankruptcy Court concluded *section 109(a)* was satisfied based on the debtor's potential causes of action, but only found the burden associated with *section 109(a)* satisfied because the foreign representatives had actually filed lawsuits in federal and state court on account of those potential claims. *Id. at 370-71*. Here, the FRs have not filed any lawsuits on account of their alleged Potential Claims, so that portion of the *In re Octaviar* holding is inapplicable.

The FRs' reliance on *Al Zawawi-Bankruptcy* comes closer to the mark. There the Bankruptcy Court considered the foreign representatives' potential claims to be property sufficient to satisfy *section 109(a)* despite those claims not yet having been filed as of the date of the petition for **[*61]** recognition.[159] *Al Zawawi-Bankruptcy, 634 B.R. at 21*. Those claims, however, would purportedly have been against entities located in the United States, for the fraudulent transfer of shares in a Florida-based corporation that owned real estate in the United States. *Id.* It is clear a United States court would have had jurisdiction over those claims had the foreign representative pursued them, because those claims would have involved assets located in the United States both at the time the transfer was made and at the time the petition for recognition was filed, and the transfer occurred at least within the lookback period for a fraudulent transfer under United States Bankruptcy Law. *Id. at 15*; *11 U.S.C. § 548(a)(1)*; *see also 11 U.S.C. § 544*.

The facts in the current case are distinct. While the FRs of the Siu-Fung Group might have *putative* claims against United States-based entities such as Mr. Lee and other third parties,[160] those claims would be (i) for assets originally located in Hong Kong and the PRC at the time the fraudulent transfers allegedly occurred, and (ii) based on conduct originally occurring nearly 25 years ago.[161] Whether those same assets are currently in the United States as of the date of the petition for recognition remains to **[*62]** be seen but needs not be determined to decide the *section 109(a)* issue at hand.[162]

To fit within that portion of the *Al Zawawi-Bankruptcy* holding which suggests un-filed causes of action for fraudulent transfers constitute property in the United States would require this Court to make a preliminary factual finding that (i) the same assets transferred out of the Siu-Fung Group prior to the liquidation proceedings in 2000 and during the BSW Sale are the same assets now in the hands of Mr. Lee and related third parties (*e.g.*, Roy USA) in

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[159] In *Al Zawawi-Bankruptcy*, a foreign debtor transferred a 60% ownership interest in a Florida-based corporation that owned real estate in the United States to an insider four months before being subject to an involuntary bankruptcy proceeding in the United Kingdom. *Al Zawawi-Bankruptcy, 634 B.R. at 15*. Later, a foreign representative of the UK bankruptcy proceeding filed a petition for recognition in the Bankruptcy Court for the Middle District of Florida. *Id.* The Bankruptcy Court granted recognition, holding the potential claims against third parties with respect to the debtor's ownership transfer "could be considered property" sufficient to satisfy *section 109(a)*. *Id.* at 21.

[160] ECF No. 151 at 54, n. 26.

[161] *See supra* note 65 and accompanying text.

[162] The *Al Zawawi-Bankruptcy* court did not rule on the merits of the foreign representatives' potential causes of action, but rather ruled those causes of action would be assets in the United States based on the facts of that case: (i) the ownership interest the foreign debtor transferred was a United States asset at the time the transfer occurred, (ii) the ownership interest was a United States asset at the time the petition for recognition was filed, (iii) the transfer occurred within the lookback period for a fraudulent transfer under United States Bankruptcy law. *Al Zawawi-Bankruptcy, 634 B.R. at 15, 21*. The *Al Zawawi-Bankruptcy* court stated no other facts on the record that were relevant to its determination that those potential claims were property in the United States under *section 109(a)*. *Id.* And none of those facts have been conclusively proven here.

the United States, and (ii) those assets were transferred fraudulently so as to give rise to potential causes of action. But the disputed nature of these factual findings is the purported genesis for this Chapter 15 proceeding; indeed, the FRs claim they need more discovery.[163] But the FRs have not yet persuaded the HK High Court these hypothetical preliminary facts are conclusively true, despite having nearly nine years of extended discovery of Mr. Lee and his family members vis-à-vis the 2016 Lam S29 Orders.[164] As the FRs aptly put, those claims remain "considered in concept" to be sure, but this Court needs more to support **[*63]** a finding that those claims constitute property in the United States today.

This Court's holding is limited to the exceptional facts surrounding Messrs. Lee and Tang's history of dealings over the past 25 years laid out *supra*. This Court is loath to articulate the boundaries of what burden may exist with respect to proving potential claims constitute property in the United States within the meaning of *section 109(a)* and leaves that issue for another court to decide. Regardless, the FRs' Potential Claims certainly do not meet the burden as it has been considered by other courts that have faced the issue, and therefore this Court must conclude the FRs have failed to satisfy *section 109(a)*.

II. THE LEE 2001 BANKRUPTCY.

With respect to the Lee 2001 Bankruptcy, the FRs argue each of the requirements for recognition under *section 1517* are satisfied and ask the Court to recognize the proceeding as a foreign main proceeding, or, in the alternative, as a foreign nonmain proceeding.[165] The Parties do not dispute *section 109(a)* is satisfied as Mr. Lee has clearly been shown to possess property in the United States at the time the petition for recognition was filed.

In opposition to recognition of the Lee 2001 Bankruptcy, Mr. Lee argues that proceeding **[*64]** does not constitute a foreign proceeding within the meaning of *section 101(23)* and therefore *section 1517* is not satisfied.[166] Mr. Lee argues against foreign main recognition on grounds that Mr. Lee's COMI is allegedly in the United States, rather than Hong Kong.[167] With respect to foreign nonmain recognition, Mr. Lee argues there is no proof to maintain the FRs' position that Mr. Lee maintains an establishment in Hong Kong.[168] Finally, Mr. Lee argues the FRs' petition should be denied under the *section 1506* public policy exception.[169]

For the reasons described further below, the Court must deny recognition of the Lee 2001 Bankruptcy. The FRs failed to meet their burden of proving Mr. Lee's COMI is in Hong Kong, and therefore the Lee 2001 Bankruptcy cannot be a foreign main proceeding. The FRs also failed to meet their burden of proving Mr. Lee maintains an establishment in Hong Kong, and therefore the Lee 2001 Bankruptcy cannot be a foreign nonmain proceeding. Accordingly, because *section 1517* is not satisfied, the Court need not and will not take a position on Mr. Lee's arguments with respect to *section*

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[163] ECF No. 151, at 62.

[164] *See supra* notes 59-65, 83-84, 86-88 (describing factual findings and orders issued by Justice Lam and Judges Harris and Man of the HK High Court with respect to the FRs' purported claims against Mr. Lee, his family members, and related third parties).

[165] ECF No. 151, at 35.

[166] ECF No. 152, at 15.

[167] *Id.* at 5.

[168] *Id.*

[169] *Id.* at 14.

1506.

A. The Lee 2001 Bankruptcy is a Foreign Proceeding Within the Meaning of *Section 101(23)*.

The FRs argue the Lee 2001 Bankruptcy is an active foreign proceeding **[*65]** within the meaning of *section 101(23)* at the time the petition for recognition was filed.[170] According to the testimony of Mr. Ong, the FRs' expert on Hong Kong law, the Lee 2001 Bankruptcy constitutes an "active, collective judicial insolvency proceeding in Hong Kong" within the meaning of *section 101(23)*.[171] Mr. Ong further testified that the discharge Mr. Lee received in his 2001 bankruptcy "[did] not end [Mr. Lee's] duties to the [HK High Court] and the FRs as a debtor under Hong Kong law," and that the FRs continue in their "efforts to realize upon assets and attend to [] other duties as representatives of the debtor['s] estate in Hong Kong (and elsewhere) until" Mr. Lee is discharged *and* his case is closed.[172]

Mr. Lee, through his own expert witness on Hong Kong law Mr. Cheng, offers little to refute the testimony of Mr. Ong or the FRs' argument.[173] Instead, Mr. Lee repeats that the discharge he received in 2005 should negate various factors within the seven-factor *Betcorp* test for determining whether a foreign proceeding exists within the meaning of *section 101(23)*.[174] The Court disagrees.

According to Mr. Ong, the Lee 2001 Bankruptcy is governed by the Bankruptcy Ordinance (Cap.6), Bankruptcy Rules (Cap.6A), and other relevant subordinate **[*66]** legislation of Hong Kong.[175] According to Mr. Ong, despite Mr. Lee having received a discharge in 2005, the Lee 2001 Bankruptcy is not yet closed, as indicated by the active and pending S29 discovery orders issued by Justice Lam and Judge Man.[176] This supports a finding that the Lee 2001 Bankruptcy is a "proceeding," "in a foreign country," that is "judicial or administrative in nature" within the meaning of *section 101(23)*.[177] *In re Betcorp Ltd., 400 B.R. at 277-78*. Mr. Ong's comprehensive description of bankruptcy proceedings under Cap 6 of the Bankruptcy Ordinance readily supports a finding that those proceedings take into account the interests of all creditors, and that those proceedings provide creditors with a meaningful claims process.[178] Accordingly, the Court finds that the Lee 2001 Bankruptcy is "collective" within the meaning of *section 101(23)*.

Mr. Lee's arguments with respect to the discharge essentially ask this Court to treat a discharge as causing a fundamental change in kind to the nature of a bankruptcy proceeding under Hong Kong law. The testimony of Mr. Cheng does not support this contention but merely reiterates that Mr. Lee is free to earn money and make a living by virtue of having received the discharge.[179] That Mr. Lee received **[*67]** a discharge, however, does not change the fact that certain assets would have been adjudicated in those proceedings had

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[170] ECF No. 151, at 69-70.

[171] *Id.*

[172] ECF No. 80-5; ECF No. 151 at 70.

[173] ECF No. 55-13.

[174] ECF No. 152, at 15.

[175] ECF No. 80-5, at 5-6.

[176] *Id.* at 15-16, Ex. B-8.

[177] According to the EU Regulation, a "proceeding" is comprised of "acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice." *In re Betcorp Ltd., 400 B.R. at 277-78*.

[178] *See generally* ECF No. 80-5.

[179] ECF No. 55-13.

alleged wrongdoing not occurred.[180] Assuming *arguendo* Mr. Lee improperly transferred certain assets out of Hong Kong within the lookback period for fraudulent transfers under Hong Kong law, those assets assumedly would have been subject to the Lee 2001 Bankruptcy. Regardless of this Court's findings with respect to whether those transfers in fact occurred, that Mr. Lee received a discharge does not negate a finding that his unclosed case before the HK High Court remains collective, and any additional assets the FRs recover in relation to that proceeding would be realized and distributed to creditors.

It may be true recognition under *section 1517* is determined at the time of the filing of the petition for recognition. And because of Mr. Lee's discharge, his debts in relation to that proceeding may no longer be subject to adjudication. It makes little sense to this Court, however, to hold that an active bankruptcy proceeding is not a foreign proceeding within the meaning of *section 101(23)* merely because the debtor there was discharged of his debts, while his assets may still be subject to **[*68]** adjudication at a later date. Accordingly, this Court finds that the Lee 2001 Bankruptcy is a foreign proceeding under *section 101(23)*. *11 U.S.C. § 101(23)*.

B. The FRs Failed to Prove Mr. Lee's COMI Is Hong Kong.

The FRs urge the Court to recognize the Lee 2001 Bankruptcy as a foreign main proceeding, arguing Mr. Lee's COMI as of the date of the petition for recognition was Hong Kong.[181] The FRs allege Mr. Lee moved to the United States for purposes of avoiding the pending Hong Kong bankruptcy proceedings, thereby manipulating his COMI in bad faith.[182] Mr. Lee argues his domicile is in the United States, and therefore his COMI should presumably be here under *section 1516(c)*.[183] Regardless of whether Mr. Lee's domicile is in the United States, the Court finds the FRs have not met their burden of proving his COMI is in Hong Kong and therefore must deny foreign main recognition.

In the case of an individual debtor, their "habitual residence...is presumed to be [their COMI]." *11 U.S.C. § 1516(c)*. While the Bankruptcy Code does not define "habitual residence," the Fifth Circuit has analyzed the term as "virtually identical" to the concept of "domicile" under United States law. *Ran-Circuit, 607 F.3d at 1022*. An individual's domicile is established by "physical presence in a location coupled **[*69]** with intent to remain there indefinitely." *See id.* (citing *Texas v. Florida, 306 U.S. 398, 59 S. Ct. 563, 83 L. Ed. 817 (1939)*). One acquires a "domicile of origin" in the location of their birth, and that domicile continues until a new one (a "domicile of choice") is acquired. *Id.* (citing *Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989)*). "To defeat the presumption of continuing domicile, and establish a new domicile, an individual must demonstrate residence in a new state and an intention to remain in that state indefinitely." *Id.* (citing *Acridge v. Evangelical Lutheran Good Samaritan Soc'y, 334 F.3d 444, 448 (5th Cir. 2003)*).

Mr. Lee was evidently domiciled in Hong Kong prior to leaving there in 2016.[184] In the absence of Mr. Lee acquiring a new domicile-by-choice, Mr. Lee's domicile would

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[180] Assuming *arguendo* Mr. Lee engaged in any such wrongful conduct as the FRs allege.

[181] ECF No. 151, at 35.

[182] *Id.*

[183] ECF No. 152, at 5.

[184] *See supra* notes 31-65 (detailing Mr. Lee's history of dealings in Hong Kong and the PRC).

presumably continue to be in Hong Kong. *Id.* Mr. Lee testified he has consistently been physically present in the United States since having arrived here in 2017.[185] Evidence of Mr. Lee physically residing in Pasadena, California and Sugarland, Texas, supports this.[186] That the home Mr. Lee lives at in Pasadena is titled to Hi Scene is not dispositive on the issue.

The more dubious question is whether Mr. Lee has demonstrated an intent to remain in the United States permanently. Mr. Lee testified he is in the process of acquiring United States citizenship and has recently married **[*70]** someone in the United States—although no documentary evidence has been admitted with respect to either of these statements.[187] Other facts potentially support a finding Mr. Lee intends to remain here permanently, including him having undergone the immigration process in the United States, having paid taxes and utility bills in California and Texas, having acquired driver's licenses here as well as a social security card and employment authorization and having started raising a new family here.[188] Mr. Lee has also provided his travel records for both Hong Kong and the United States, which reflect he has not been to Hong Kong since August of 2019.[189] This evidence is sufficient to support a finding that Mr. Lee has an intent to remain permanently in the United States, and that sometime between 2016 and 2024 he acquired a new domicile of choice here. *Ran-Circuit, 607 F.3d at 1023*; *Mississippi Band of Choctaw Indians, 490 U.S. at 48*; *Acridge, 334 F.3d at 448*. Therefore, Mr. Lee's COMI would ordinarily be presumed in the United States under *section 1516(c)*. *11 U.S.C. § 1516(c)*.

Nonetheless, Mr. Lee's temporary visa status in the United States must be given weight when considering whether the COMI presumption has been rebutted. *In re Loy, 380 B.R. 154 at 163*. The FRs correctly point out Mr. Lee has only been able to stay in **[*71]** the United States on temporary work visas which necessarily have expiration dates.[190] Despite having resided here for nearly 9 years, Mr. Lee has yet to acquire a green card or United States citizenship.[191] If Mr. Lee's current or future visas were to expire without renewal, he would be forced to leave this country. Accordingly, regardless of the Court's conclusion on domicile, Mr. Lee's temporary visa status constitutes evidence to the contrary that his COMI is in the United States, thereby rebutting the 1516(c) presumption. *See id.* (presuming COMI in the UK because lapse in debtor's United States visa necessarily required debtor to return there); *see also Ran-Circuit, 607 F.3d at 1022-23* (finding COMI presumption rebutted despite otherwise concluding debtor's habitual residence was in the United States).

Application of the *SPhinX* factors also supports a finding the COMI presumption under *section 1516(c)* is rebutted. The location of Mr. Lee's primary assets is likely in the United States—but remains somewhat unclear based on the record to be sure. A majority of Mr. Lee's creditors who would be affected by this Chapter 15 case are in Hong Kong, having filed their claims and participated in the Lee 2001 Bankruptcy before the HK High **[*72]** Court there. Moreover, Hong Kong is the

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[185] *Lee Trial Testimony*, ECF No. 117, at 5 ¶¶ 23-25, 6 ¶¶ 1-24.

[186] ECF No. 59-3 (Mr. Lee's California and Texas drivers' licenses, listing the Pasadena and Texas homes, respectively as Mr. Lee's residences).

[187] *Lee Trial Testimony*, ECF No. 133, at 73 ¶¶ 9-15.

[188] ECF No. 59-1-6, 59-13-25; *Lee Trial Testimony*, ECF No. 133, at 74 ¶¶ 1-11.

[189] ECF No. 55-16-18.

[190] ECF No. 55-19-24; ECF No. 58-1-4; ECF No. 59-1-2.

[191] *See supra* notes 187, 188.

jurisdiction whose law would apply to disputes over any alleged fraudulent transfers that may have occurred.

Accordingly, we cannot rely on section 1516(c)'s presumption for determination of Mr. Lee's COMI, and instead must consider all evidence, "while keeping in mind that it is [the FRs'] burden to persuade the court by a preponderance of the evidence that [Mr. Lee's] COMI is in [Hong Kong]." *See* Ran-Circuit, 607 F.3d at 1023 (citing Bear Stearns-District, 389 B.R. at 335-36; Fed. R. Evid. 301 ("explaining that a party's rebuttal of a presumption does not shift the burden of proof; rather, the risk of nonpersuasion remains upon the party on whom it was originally cast—in this case, [the FRs]")).

In the Court's view, however, the FRs have done little to satisfy this burden, other than to imply *ipse dixit* that because Mr. Lee lives and works in the United States temporarily, the Court should necessarily conclude his COMI is in Hong Kong. While true Mr. Lee would need to leave the United States upon the expiration of his visa, the FRs have not conclusively proven Mr. Lee's visa is subject to an impending lapse, nor that Mr. Lee would need to return to Hong Kong to renew it. Stated another way, the FRs have failed to show Mr. Lee will leave the United **[*73]** State and return to Hong Kong to renew the temporary work visas he relies on to stay here. *Cf.* In re Loy, 380 B.R. at 163) (concluding debtor's COMI was the UK because his temporary visa was subject to lapse and he needed to return to the UK to renew it). Moreover, Mr. Lee has other avenues for remaining permanently in the United States, including pursuing citizenship, or marrying a United States citizen and starting the green card process. Again, Mr. Lee testified that he is pursuing at least one of those avenues.[192] The fact that Mr. Lee's visa has been sponsored by his foreign employer Lion Legend is not dispositive on the issue of his COMI. In total, the evidence fails to demonstrate Mr. Lee's COMI is in Hong Kong.

The FRs continue to come up short even after considering their COMI manipulation argument. First, it should be noted that COMI manipulation analyses tend to focus on a debtor's manipulation of COMI to a different jurisdiction in attempts to manufacture a foreign main proceeding *there. In re InterCement Brasil S.A., 668 B.R. 802 (Bankr. S.D.N.Y. 2025)* (analyzing COMI shift from letterbox jurisdiction to debtor's "undisputed principal place of business" in Brazil); In re Suntech Power Holdings Co., Ltd., 520 B.R. at 419 (analyzing COMI shift from PRC to Caymans); In re Ocean Rig UDW Inc., 570 B.R. at 704 (analyzing COMI shift from the Republic of the **[*74]** Marshall Islands to Caymans); In re Sunac China Holdings Ltd., 656 B.R. at 730-31 (analyzing purported COMI shift from Caymans to Hong Kong); Fairfield Sentry-Circuit, 714 F.3d at 138-39 (analyzing purported COMI shift from various jurisdictions to BVI). This case involves the opposite factual pattern—Mr. Lee's purported COMI shift away from Hong Kong would serve to *negate* a finding that the Lee 2001 Bankruptcy was a foreign main proceeding.

Second, the FRs have not introduced sufficient evidence as to indicate whether "insider exploitation, untoward manipulation, [or the] overt thwarting of third-party expectations" took place. Fairfield Sentry-Circuit, 714 F.3d at 138. It may be true Mr. Lee left Hong Kong around the time the Lam S29 Orders were issued. The record indicates, however, that Mr. Lee's move was justified by valid and reasonable purposes: to develop Roy Group investments in California and Texas, and to start a new life here. Moreover, with respect to thwarting third-party expectations, the FRs

[192] *See supra* note 187.

were able to ascertain the location of Mr. Lee's purported residence in the United States *through an internet search*.[193] The Court declines to find Mr. Lee's COMI shift from Hong Kong to the United States was done in bad faith.

Third, even if the Court were to agree Mr. Lee's immigration was a bad **[*75]** faith attempt to prevent creditors from readily ascertaining his COMI—which it does not—this would not outweigh the substantial evidence Mr. Lee introduced regarding his *bona fide* life here over the past 9 years. *See Ran-Circuit, 607 F.3d at 1024* (citing *Pennzoil Co. v. F.E.R.C., 789 F.2d 1128, 1136 (5th Cir. 1986)* ("noting that a fact finder can still credit the evidence of the party in favor of whom the rebutted presumption operates despite the existence of contrary evidence and despite the resultant destruction of the presumption"); *see also In re Pirogova, 593 B.R. at 414-15* (denying foreign main recognition and stating "[foreign debtor's] past conduct is not a factor the [c]ourt is required to consider in evaluating whether the [foreign proceeding] can be recognized as a foreign main proceeding").

After considering the totality of the circumstances in this case, including evidence of Mr. Lee's life in the United States and the insufficient evidence proving his COMI is elsewhere, the Court concludes the FRs failed to prove by a preponderance of the evidence Mr. Lee's COMI is in Hong Kong. Accordingly, the Court must deny foreign main recognition as to the Lee 2001 Bankruptcy.

C. The FRs Failed to Prove Mr. Lee Has an Establishment in Hong Kong.

The FRs' argument that Mr. Lee maintained an establishment **[*76]** in Hong Kong through Lion Legend as of the date of the petition for recognition involves a three-step line of reasoning which the Court will address in turn.[194]

First, the FRs ask this Court to make a finding that Lion Legend as a company constituted an establishment in Hong Kong up through 2021. Mr. Lee previously stated in an affirmation to the HK High Court that Lion Legend had no activity in Hong Kong after the PRC Sale to White Horse occurred in 2017.[195] To the contrary, evidence indicates Lion Legend continued to conduct business in Hong Kong after 2017—at least through 2021.[196] The Lion Legend accounting ledgers, some of which were provided to the FRs by Lion Legend's accounting firm in Hong Kong CWC/Hyphen Asia (hereinafter "CWC/Hyphen"), reflect approximately HK$4 billion worth of debit and credit transactions between 2017 and 2021.[197] These transactions include payments to Mr. Lee, Roy Group subsidiaries in the United States (including Roy USA), Mr. Lee's wife, Ms. Wen, Sujida, various professional firms in Hong Kong including CWC/Hyphen, and payments to rent the office space Lion Legend

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[193] *Tang Trial Testimony*, ECF No. 156 at 37 ¶¶ 12-16; ECF No. 2-10 (showing Staff Report from the Code Enforcement Commission in Pasadena, California, which allegedly revealed to the FRs the location of Mr. Lee in the United States).

[194] ECF No. 151.

[195] ECF No. 77-16, at 14 ¶ 32(c).

[196] ECF Nos. 61-2, 5, 7, 8; ECF Nos. 65-1, 4, 9, 12, 13, 14; ECF No. 77-12; ECF Nos. 78-17-20; ECF No. 118-1. Mr. Lee testified to this Court that Lion Legend has been in liquidating as of 2022. ECF No. 118-1. The Certificate of Incumbency Mr. Lee produced, however, indicate that as of July 18, 2024, Lion Legend was active and in good standing in the Caymans, with Suriya as Director and Sujida as Secretary. ECF No. 60-17; ECF No. 65-16. Evidence also indicates Lion Legend was registered as an active business entity in Hong Kong through April 22, 2025. ECF No. 118-1. Registration alone, however, is not dispositive on establishment. *In re Brit. Am. Ins. Co. Ltd., 425 B.R. at 915*.

[197] ECF Nos. 78-17-20.

occupied in Hong Kong.[198] The 2017 through 2021 ledgers also reflect what purports to be substantial **[*77]** investment transactions between Lion Legend and Hong Kong banks.[199]

Accordingly, sufficient evidence was introduced to support a finding that during 2017 through 2021, Lion Legend had a place of operations in Hong Kong which had a local effect on the marketplace, and that it conducted nontransitory economic activity there. *See* Brit. Am. Ins. Co. Ltd., 425 B.R. at 916 (concluding company had establishment in Saint Vincent and Grenadines because *inter alia* it conducted business, maintained accounts, and was involved in financial transactions in the local market there). Accounting ledgers after 2022,[200] however, were not introduced into evidence, leaving the Court to infer what business activity Lion Legend may have undergone in Hong Kong up until the petition for recognition was filed in 2024.

Second, the FRs attempt to connect Lion Legend to Mr. Lee. The FRs ask this Court to find Mr. Lee was directing and controlling Lion Legend between the time he originally immigrated to the United States in 2016, up through 2024, because he was purportedly acting as Chairman and Director of the company. According to the FRs' reasoning, if Mr. Lee was acting as director of that company—at least for the years 2017 through 2021—he necessarily **[*78]** would have had an establishment in Hong Kong.

It may be true Mr. Lee has misrepresented his relationship with Lion Legend in the past. For example, in 2016 Mr. Lee affirmed under oath to the HK High Court that he had "no relationship with Lion Legend,"[201] while in 2025 his daughter affirmed under oath to the same court that Mr. Lee was the director of that company in 2015.[202] In addition, documentary evidence shows that between the time Mr. Lee originally immigrated to the United States in 2016 up through 2022, he was listed as the Chairman and Director of Lion Legend in corporate documents which also contained his signature in such capacity.[203] The FRs also sought to indirectly show Mr. Lee controlled Lion Legend because (i) his daughter Sujida, the purported director of Hi Scene and HSI, and purported secretary of Lion Legend, stated in a response to the Justice Man S29 discovery orders that she has little to do with these companies, and (ii) she has been a "housewife with four children" since 2016 "who relie[s] upon her family to assist with the day-to-day operations of the companies."[204]

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[198] *Id.*

[199] *Id.*

[200] To the extent Lion Legend accounting ledgers were introduced for the year of 2022, those ledgers did not reflect the same level of financial transactions as had previously taken place between the years 2017 through 2021. ECF No. 77-12.

[201] ECF No. 67-4, at 4 ¶ 6.

[202] ECF No. 118-2, at 16 ¶ 40.2(c).

[203] ECF No. 61-3, at 3 (Lion Legend reports and consolidated financial statements for 2017 showing Mr. Lee as director); ECF No. 61-5, at 3 (Lion Legend reports and consolidated financial statements for 2018); ECF No. 61-6, at 6 (CWC/Hyphen audit engagement letter signed by Mr. Lee as director); ECF No. 61-8, at 3 (Lion Legend reports and consolidated financial statements for 2019 showing Mr. Lee as director); ECF No. 65-2, at 1 (Lion Legend 2020 certificate of incumbency showing Mr. Lee as director since 2017); ECF No. 65-3, at 20 (Lion Legend security transfer agreement from 2020, signed by Mr. Lee as director); ECF No. 65-4, at 3 (Lion Legend reports and consolidated financial statements for 2020 showing Mr. Lee as director); ECF No. 65-8 (Lion Legend directors' report, signed by Mr. Lee as director, dated April 14, 2021); ECF No. 65-7 (Lion Legend economic substance notification declaration for year 2021, showing Mr. Lee as director, signed December 21, 2022); ECF Nos. 78-17-20 (audited accounting ledgers and financial statements of Lion Legend from 2017 through 2021, showing "amounts due to director" being paid to Mr. Lee).

[204] ECF No. 56-3, at 7 ¶ 7(4); ECF No. 151., at 27.

The FRs' argument on step two, however, suffers from the same deficiency as their argument on step one: insufficient **[*79]** evidence was introduced directly showing Mr. Lee was acting as Chairman and Director of Lion Legend past 2022, let alone up and through 2024. Again, the Court is left to infer whether Mr. Lee was acting as the *de facto* director of Lion Legend at the time the petition for recognition was filed.

The FRs recognize the Court's conclusion on establishment hinges on inferences it must make with respect to Lion Legend's business dealings in 2024 and Mr. Lee's relationship therewith. The FRs' third step, accordingly, is to ask that the Court make such inferences negatively against Mr. Lee based on allegations he purposefully spoliated evidence by ordering the collection and destruction of relevant Lion Legend documents held by CWC/Hyphen.[205]

On November 26, 2024, Mr. Lee sent a letter to CWC/Hyphen purportedly directing the accounting firm to turn over all records in its possession relating to Lion Legend and other entities potentially associated with Mr. Lee—including Roy Group entities—to his nephew Suriya, a Managing Director of the Roy Group.[206] Around the same time, Mr. Lee purportedly instructed Suriya to collect from CWC/Hyphen the Lion Legend documents pertaining to the relevant years before **[*80]** the accounting firm had a chance to fully comply with discovery requests pertaining to this Chapter 15 proceeding.[207] According to the FRs, Mr. Lee was aware of how crucial these documents would be to prove their establishment argument, which is why he orchestrated their collection and purported destruction before the FRs could use them in this case. According to the FRs, Mr. Lee's conduct should therefore entitle them to a negative inference against him with respect to their establishment arguments. The Court rejects the FRs' argument for two reasons.

First, the FRs presume the very fact they seek to prove by referencing Mr. Lee's purported document turnover order. According to the FRs, Mr. Lee must have been in control of Lion Legend because why else would he direct CWC/Hyphen to turn over the documents? Simultaneously, the FRs point to the fact that Mr. Lee directed CWC/Hyphen to turn over the documents as proof Mr. Lee was in control of Lion Legend.

The FRs' arguments resemble a house of cards. Much like the FRs other arguments with respect to foreign nonmain recognition, the FRs ask the Court to presume too much based on too little evidence, all while bearing the burden of proof. Moreover, **[*81]** the FRs have not conclusively proven Suriya was acting as the agent of Mr. Lee when he purportedly collected documents of Lion Legend from CWC/Hyphen. At trial Mr. Lee resisted the characterization that he "directed" Suriya to go to CWC/Hyphen and collect any records.[208] The FRs did not submit any other evidence on the matter as to prove Suriya was acting as Mr. Lee's agent at the time but instead rely on the November 26 letter as a crutch that shows Mr. Lee must have had some control over Lion Legend simply because he directed the CWC/Hyphen to turn over documents relating to the company. If Suriya was not acting as Mr. Lee's agent, why is it relevant Mr. Lee instructed Suriya to collect the Lion Legend documents from CWC/Hyphen? Once again, the FRs ask the Court to presume Mr. Lee was in control of Lion Legend first, then use inconclusive and contingent factual findings to backfill their reasoning. The Court remains

[205] ECF No. 151 at 38.

[206] ECF No. 66-6, at 3.

[207] ECF No. 66-8.

[208] *Lee Trial Testimony*, ECF No. 133 at 19 ¶¶ 3-22, 20 ¶¶ 1-5.

unconvinced.

Second, and more importantly, Mr. Lee may have had a valid alternative justification for ordering the collection of Lion Legend documents from CWC/Hyphen, which the FRs do not adequately address. "Spoliation of evidence 'is the destruction **[*82]** or significant and meaningful alteration of evidence.'" *See* Guzman v. Jones, 804 F.3d 707, 713 (5th Cir. 2015) (quoting Rimkus Consulting Grp., Inc. v. Cammarata, 688 F.Supp.2d 598, 612 (S.D. Tex. 2010)). "We permit an adverse inference against the spoliator...only upon a showing of 'bad faith' or 'bad conduct,'" which generally means "destruction for the purpose of hiding adverse evidence." *See id.* (citing Condrey v. SunTrust Bank of Georgia, 431 F.3d 191, 203 (5th Cir. 2005); Mathis v. John Morden Buick, Inc., 136 F.3d 1153, 1155 (7th Cir. 1998)). "'Bad faith' is a question of fact like any other, so the trier of fact is entitled to draw any reasonable inference." Mathis, 136 F.3d at 1155.

Given Mr. Lee's relationship with Lion Legend as a former-director/ current-manager was crucial to the outcome of the petition for recognition, Mr. Lee either was on notice or should have known any recent documents relating to his dealings with Lion Legend were relevant to this litigation. Accordingly, Mr. Lee had a duty to preserve. Guzman v. Jones, 804 F.3d at 713.

When questioned at trial as to the November 26 letter to CWC/Hyphen and his instructing Suriya to collect the Lion Legend documents, Mr. Lee admitted the motivation behind his conduct was a purported data leak that might expose "Roy Asset [*sic*]" (the Roy Group) to insider trading risks.[209] Mr. Lee has been accused of and found liable of insider trading in the past.[210] In the Court's view, it is reasonable to infer that Mr. Lee's motivation for ordering the collection **[*83]** of the Lion Legend documents was to minimize future liability associated with insider trading violations, rather than hiding adverse evidence relating to his alleged control over Lion Legend up and through 2024. *See* Mathis, 136 F.3d at 1155-56 (upholding magistrate court's finding that destruction of evidence was not done in bad faith and upholding its denial of adverse inference against would-be spoliator). Contrary to what the FRs may believe, just because Mr. Lee "does not follow the trades of Roy Asset"[211] does not mean he is not justified in his concerns about issues relating to insider trading and potential data leaks of the company's financial records and information—particularly in light of his previous exposure.

As such, the Court declines to afford the FRs a negative inference against Mr. Lee with respect to any purported connection he may have had with Lion Legend as of the date the petition for recognition was filed. Any business activities of Lion Legend that may have occurred in Hong Kong in 2024 cannot serve as a basis for this Court to conclude Mr. Lee maintains an establishment there, because the FRs have not conclusively proven Mr. Lee was the director of that company on the **[*84]** date of the petition for recognition.

As an alternative argument, the FRs attempt to characterize Lion Legend as Mr. Lee's economic lifeline to the United States.[212] According to the FRs, Mr. Lee's reliance on Lion Legend for his employment, salary, and visa indicate he maintains an economic connection, if not an establishment in Hong Kong. This argument also fails for two

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[209] *Id.* at 20, ¶¶ 8-25; ECF No. 77-15, at 3.

[210] ECF No. 67-19.

[211] *Lee Trial Testimony*, at 21 ¶¶ 8-15.

[212] ECF No. 151, at 52.

reasons.

First, Mr. Lee's employment as a manager of Lion Legend is not dispositive on the issue of whether he maintains an establishment in Hong Kong.[213] *Ran-Circuit, 607 F.3d at 1027* (analogizing a corporate debtor's "place of operations" to an individual's "place of employment in the country where the [foreign representative] claims the [debtor] has an establishment"). Mr. Lee may be employed by Lion Legend, but he evidently performs his work in the United States, and his work evidently relates to United States-based Roy Group subsidiaries that own and control Roy Group real estate investments here, including various investments projects in Houston.[214] Mr. Lee's employment by Lion Legend and work *in the United States* does not prove he has a "place of employment" *in Hong Kong*, let alone an establishment there. *Id.* The fact that he has received payments from Lion **[*85]** Legend for his role as manager[215] also does not convert his employment in the United States into an establishment in Hong Kong.

Second, Mr. Lee's participation in the L1-A visa program does not prove he maintains an establishment in Hong Kong. The L1-A visa program purportedly requires participation of at least one "qualifying organization abroad," which does business that is "regular, systematic, and continuous."[216] That Mr. Lee relies on Lion Legend as the requisite "qualifying organization abroad" still does not prove *Mr. Lee* conducts such business in Hong Kong, nor does it prove he maintains a place of employment there nor conducts nontransitory economic activity there. Once more, the FRs seem to conflate Mr. Lee's employment as a manager of Lion Legend in the United States with economic activity Lion Legend as a company may or may not undergo in Hong Kong.

In the Court's view, the FRs' evidence fails to meet the "rather high" bar of proving Mr. Lee maintained an establishment in Hong Kong as of July 19, 2024, the date the petition for recognition was filed. *Ran-Circuit, 607 F.3d 1027-28*. Accordingly, the Court must conclude the FRs have failed to prove the Lee 2001 Bankruptcy is a foreign nonmain **[*86]** proceeding within the meaning of *section 1517(b)(2)*. Given the FRs have failed to prove the Lee 2001 Bankruptcy is either a foreign main or foreign nonmain proceeding, the requirements for recognition under *section 1517(a)* have not been satisfied, and the Court must deny recognition of that proceeding under Chapter 15.

CONCLUSION[217]

For the foregoing reasons, the Court denies recognition of both the Siu-Fung Group liquidation proceedings as well as the Lee 2001 Bankruptcy.

Mr. Lee's counsel is directed to settle an order regarding recognition and separate orders regarding all the related motions, consistent with this opinion, within 14 days.

SIGNED 02/10/2026

/s/ Alfredo R. Pérez

Alfredo R. Pérez

United States Bankruptcy Judge

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[213] ECF No. 65-6, at 1 (showing Mr. Lee's employment at Lion Legend as general manager, as of November 4, 2021).

[214] *Lee Trial Transcript*, ECF No. 117, at 17 ¶¶ 1-7.

[215] ECF No. 65-6.

[216] ***8 C.F.R. 214.2(l)(1)(ii)(G)***, ***(H)***.

[217] This Memorandum Opinion constitutes the findings of fact and conclusions of law required by *Rule 7052 of the Federal Rules of Bankruptcy Procedure*.

End of Document

In re Mega Newco

United States Bankruptcy Court for the Southern District of New York

February 24, 2025, Decided

Chapter 15, Case No. 24-12031 (MEW)

Reporter
2025 Bankr. LEXIS 398 *; 2025 LX 342938; 2025 WL 601463

In re: ***MEGA NEWCO*** LIMITED, Debtor in a Foreign Proceeding

Counsel: [*1] For the Debtor and Foreign Representative: David H. Botter, Esq., Thomas S. Kessler, Esq., Miranda Hatch, Esq., Carla Martini, Esq., Kaleinanni Nallira, Esq., CLEARY GOTTLIEB STEEN & HAMILTON LLP, New York, NY.

For the Ad Hoc Group of Noteholders: Adam J. Goldman, Esq., Jonathan J. Weichselbaum, Esq., David Hammerman, Esq., LATHAM & WATKINS LLP, New York, NY.

OFFICE OF THE UNITED STATES TRUSTEE: Andrea B. Schwartz, Esq., New York, NY.

Judges: HONORABLE MICHAEL E. WILES, UNITED STATES BANKRUPTCY JUDGE.

Opinion by: MICHAEL E. WILES

Opinion

DECISION GRANTING RECOGNITION OF A FOREIGN PROCEEDING AND ENFORCING AN ORDER APPROVING A SCHEME OF ARRANGEMENT

HONORABLE MICHAEL E. WILES

UNITED STATES BANKRUPTCY JUDGE

Mega Newco Limited ("***Mega Newco***") is a wholly owned subsidiary of a Mexican financial services company named Operadora de Servicios ***Mega***, S.A. De C.V., Sofom, E.R. (the "**Parent**"). ***Mega Newco*** was formed under the laws of England and Wales on September 30, 2024, for the purpose of assisting its Parent in the completion of a restructuring of obligations under a set of notes (the "**U.S. Notes**") that the Parent issued in 2020 under an Indenture that is governed by New York law. ***Mega Newco*** has asked this Court (i) to grant recognition **[*2]** of a foreign proceeding (the "**English Scheme Proceeding**") that ***Mega Newco*** commenced in the High Court of Justice Business and Property Courts of England and Wales (the "**English Court**"), and (ii) to enforce, in the United States, an order entered by the English Court (the "**English Court Order**") that approved the scheme of arrangement (the "**Scheme of Arrangement**") that ***Mega Newco*** proposed.

The Parent is based in Guadalajara, Mexico and has its headquarters there. For various reasons, the Parent faced liquidity constraints and needed to restructure its obligations, including its obligations under the U.S. Notes. The Parent negotiated with an ad hoc group of noteholders that collectively owned more than 25 percent of the outstanding U.S. Notes, and the parties reached agreement on the terms of a possible restructuring at some time during 2024. I will not attempt to describe in full the deal that the parties reached, but it provides that holders of the U.S. Notes may choose to receive either partial cash payments from the

Parent or to receive equity in the Parent in exchange for their U.S. Notes. The agreement also gives certain holders of the exiting U.S. Notes the opportunity to buy new **[*3]** notes to be issued by the Parent.

The Parent has also negotiated consensual arrangements to refinance and restructure other debt obligations. Those other agreements are contingent on the completion and enforcement of the agreed restructuring of the U.S. Notes. Together all of these negotiated restructurings will improve creditor recoveries, strengthen the finances of the Parent, and preserve the value of the operating business.

However, the agreed restructuring of the U.S. Notes raised practical problems. The U.S. Notes could not be restructured outside of a bankruptcy proceeding except with the affirmative consent of one hundred percent of the holders of the U.S. Notes. As a general matter it is not possible to obtain that level of affirmative consent to a note restructuring, and that is particularly so in this case, where dealings with some of the holders of the U.S. Notes are constrained because they are what the Debtor has referred to as "Sanctioned Persons." Bankruptcy laws would permit a restructuring of the U.S. Notes without one hundred percent consent, but most of those laws would not have permitted a surgical restructuring of just the U.S. Notes. However, U.K. laws permit the **[*4]** approval of a consensual scheme of arrangement that deals with a single set of note obligations, and pursuing such a scheme of arrangement in the English Court also promised to be less expensive and time-consuming than other alternatives. The parties therefore wished to implement the desired restructuring of the U.S. Notes through the English Court under a U.K. scheme of arrangement.

U.K. courts have held that they have jurisdiction to approve a scheme of arrangement so long as the debtor has a substantial connection with the U.K., which may include the presence of a registered office or the fact that the relevant obligations are governed by U.K. laws. However, the Parent did not have its registered office in the U.K.; the U.S. Notes are governed by New York law (not English law); and the Parent had no substantial business operations or facilities in the U.K. Counsel conceded during the hearing that I held on February 7, 2025, that the Parent therefore would not have had the right, in its own name and on its own behalf, to seek approval of a proposed scheme of arrangement by the English Court.

Mega Newco was created to address this issue. More particularly:

- ***Mega Newco*** was incorporated **[*5]** on September 30, 2024, under the laws of England and Wales, and listed its registered office as an address in London.

- ***Mega Newco*** signed documents by which it made itself an additional obligor under the U.S. Notes. ***Mega Newco*** also agreed that the Parent could seek contribution from ***Mega Newco*** for any payment made by the Parent on the U.S. Notes.

- ***Mega Newco*** then filed the necessary papers to commence the English Scheme Proceeding on November 14, 2024. ***Mega Newco*** also commenced this Chapter 15 proceeding in November 2024.

The papers submitted to the English Court made clear that ***Mega Newco*** was created for the purpose of enabling the English Court to take jurisdiction over the proposed scheme of arrangement. The English Court has approved the exercise of jurisdiction on this basis, and it has approved ***Mega Newco***'s proposed Scheme of Arrangement, including those

provisions that resolve the noteholders' claims against the Parent as well as against ***Mega Newco***. The holders of U.S. Notes had the right to appear at a meeting that was convened to solicit votes with respect to the proposed Scheme of Arrangement, and the holders of more than seventy-five percent of the U.S. Notes appeared either **[*6]** in person or through proxies. The Scheme of Arrangement was approved unanimously by those who voted, and no objections were filed with the English Court.

No party has objected to the proposed recognition of the English Scheme Proceeding in this Chapter 15 case, or to the enforcement, in the United States, of the English Court Order and the Scheme of Arrangement. The Office of the United States Trustee raised some issues about the release provisions in the Scheme of Arrangement, but it has reached an agreement with the Debtor on a modification to those provisions insofar as they would be given effect in the United States. No other issues have been raised.

Under Chapter 15, a foreign bankruptcy or insolvency proceeding may be recognized, and the orders entered in such a proceeding may be enforced, if the foreign proceeding is either a "foreign main proceeding" or a "foreign nonmain proceeding." *11 U.S.C. § 1517(a)(1)*. A foreign proceeding is a "foreign nonmain proceeding" if it is pending in a country in which a debtor has an "establishment." I issued a decision in ***In re*** *Mood Media Corp., 569 B.R. 556, 561-63 (Bankr. S.D.N.Y. 2017)*, in which I held that for this purpose an "establishment" must be an actual place from which economic market-facing activities are regularly conducted. **[*7]** However, ***Mega Newco*** represented to the English Court that it has never engaged in any business, let alone any regular market-facing activities that it conducted from a location in the U.K. ***Mega Newco*** has engaged in restructuring activities, but those activities are not themselves sufficient to show the existence of an "establishment" in the U.K. If restructuring activities alone were sufficient, then any proceeding in which a debtor sought relief would automatically qualify as a "foreign nonmain proceeding," and the requirement of an "establishment" would be deprived of any meaning. *See Lavie v. Ran (**In re** Ran), 607 F.3d 1017, 1028 (5th Cir. 2010)* (holding that if a foreign "bankruptcy proceeding and associated debts, alone, could suffice to demonstrate an establishment, this would render the framework of Chapter 15 meaningless. There would be no reason to define establishment as engaging in a nontransitory economic activity. The petition for recognition would simply require evidence of the existence of the foreign proceeding."); *see also **In re** Modern Land (China) Co., 641 B.R. 768, 785-86 (Bankr. S.D.N.Y. 2022)* (holding that a foreign restructuring proceeding "cannot itself constitute nontransitory economic activity to support recognition as a foreign nonmain proceeding"); *Rozhkov v. Pirogova (**In re** Pirogova), 612 B.R. 475, 484 (S.D.N.Y. 2020)* (same).

A foreign proceeding is a "foreign **[*8]** main proceeding" if it is taking place in the jurisdiction where the debtor has its center of main interests, or COMI. *11 U.S.C. § 1502(4)*. *Section 1516(c) of the Bankruptcy Code* provides that "[i]n the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests." *11 U.S.C. § 1516(c)*. ***Mega Newco***'s registered office is in London. Unlike some other cases, there is no "contrary evidence" in the record before me that indicates that ***Mega Newco***'s own COMI is located outside the United Kingdom. *See **In re** Bear Stearns High-Grade Structured Credit Strategies Master Fund, **Ltd**., 374 B.R. 122, 129-30 (Bankr. S.D.N.Y. 2007)* (holding that other evidence before the Court showed that

the debtor's COMI was not situated where the debtor had contended). ***Mega*** ***Newco*** has engaged in restructuring activities in the U.K., and those may be considered in determining whether its COMI is in the U.K. *See Morning Mist Holdings* ***Ltd****. v. Krys (****In re*** *Fairfield Sentry* ***Ltd****.), 714 F.3d 127, 138 (2d Cir. 2013)*. These restructuring activities apparently are the only activities in which ***Mega*** ***Newco*** has ever engaged.

As a matter of form, then, ***Mega*** ***Newco*** argues that the requirements for recognition of the English Scheme Proceeding as a "foreign main proceeding" have been satisfied. I nevertheless cannot help but see significant risks in the structure that has been used here. Chapter 15 is premised on the idea that a debtor who seeks to restructure **[*9]** an obligation is actually the subject of a foreign proceeding, and that the foreign proceeding is located in the country where that debtor has its COMI. Here, the whole structure admittedly was created for the purpose of restructuring the U.S. Notes issued by the Parent. However, the Parent is not a party to the English Scheme Proceeding, and the Parent's COMI is in Mexico, not the U.K. ***Mega*** ***Newco*** was created, and then voluntarily subjected itself to the Parent's liabilities under the U.S. Notes, just so that the U.S. Notes issued by the Parent could be restructured in a jurisdiction that was not otherwise available.

If we were routinely to allow this structure in all cases, no matter what the circumstances, the ordinary predicates for Chapter 15 relief could be stripped of meaning. Any debtor company could restructure its obligations anywhere it chose without even subjecting itself to a foreign proceeding. All that a debtor would need to do is to form a new subsidiary in a jurisdiction of its choice and then cause that new subsidiary to assume the parent company's obligations. The parent company's COMI would no longer be relevant to the parent's restructuring of its debts. The laws **[*10]** of the chosen jurisdiction would govern a restructuring, no matter how those laws might affect the legitimate expectations of creditors and regardless of whether the debtor had chosen a particular jurisdiction for the purpose of favoring insiders or for other improper reasons.

Courts and commentators have long worried about instances in which a debtor might try to manipulate its COMI, fearing that such a manipulation could be done to thwart creditor expectations or to accomplish other improper objectives. *See, e.g.,* ***In re*** *Fairfield Sentry* ***Ltd****., 440 B.R. 60, 65-66 (Bankr. S.D.N.Y. 2010)* (identifying concerns and explaining that courts may make a broader assessment of COMI if there has been an "opportunistic shift to establish COMI (i.e., insider exploitation, untoward manipulation, overt thwarting of third party expectations.)"); *see also* ***In re*** *Modern Land (China) Co., 641 B.R. 768, 782-83 (Bankr. S.D.N.Y. 2022)* (same); ***In re*** *Ocean Rig UDW Inc., 570 B.R. 687 (Bankr. S.D.N.Y. 2017)* (same). The issue before me, then, boils down to this: does the underlying structure in this case constitute such an improper manipulation of COMI? Should I disregard the form of the transactions and disregard the participation by ***Mega*** ***Newco***, and look instead to whether the Parent, on its own, has satisfied the conditions for relief under Chapter 15?

Clearly, the structure before me could be used in another case **[*11]** as a way of frustrating and thwarting the legitimate expectations of creditors. This case, however, involves no such frustration or thwarting of creditor rights. ***Mega*** ***Newco*** was formed, and the English Scheme Proceeding was pursued, for laudable objectives. The Scheme of Arrangement will enable a broader restructuring to be accomplished efficiently and thereby will enhance all parties' recoveries. It will also

maximize the value of the underlying businesses. In these respects, the enforcement of the Scheme of Arrangement is fully consistent with the stated purposes of Chapter 15. *See* 11 U.S.C. § 1501(a).

In addition, the procedures that the parties have followed were not implemented in any way that took unfair advantage of the holders of the U.S. Notes. The whole process was worked out with the involvement and consent of the affected creditors, and not for the purpose of harming them or of thwarting their expectations. The Noteholders and their Indenture Trustee are aware of the basis on which U.K. jurisdiction has been asserted and have not objected to it. There similarly is not a single objection to the recognition of the U.K. proceeding or the enforcement of the U.K. order.

If COMI manipulation is a **[*12]** matter of concern because of the risk that creditors' rights and expectations might be thwarted, then one of the main factors I ought to consider, in deciding whether such a manipulation has occurred, is whether the affected creditors have asserted any objection. *See* ***In re*** *SPhinX,* ***Ltd.****, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006)* (holding that COMI determinations should not be made "mechanically," that COMI should be assessed "in light of chapter 15's emphasis on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor's value," that creditors presumably are in the bast position to determine whether their own expectations are being thwarted, and therefore that "one generally should defer . . . to the creditors' acquiescence in or support of a proposed COMI"). Ironically, the only thing that would thwart creditor expectations in the case before me would be if I were to decline to enforce the English Court Order. It would be absurd for me to thwart the creditors' constructive desires and expectations in the guise of supposedly protecting them.

If there were an actual contention or evidence that the structure at issue here had been used in an unfair way and had thwarted third-party expectations, **[*13]** there would be serious questions in my mind as to whether it ought to be approved. However, in light of the support of all of the affected parties and their overwhelming consent to the English Scheme Proceeding and the approval of the Scheme of Arrangement, and the other factors that I have cited, I see no cause in this particular case to look past the form of the transactions or to pursue theoretical issues that no affected party wishes to pursue. I will therefore recognize the English Scheme Proceeding and enforce the English Court Order.

A separate Order has been issued to reflect the Court's rulings.

Dated: New York, New York

February 24, 2025

/s/ Michael E. Wiles

Honorable Michael E. Wiles

United States Bankruptcy Judge

End of Document

In re Geden Holdings, Ltd.

United States Bankruptcy Court for the Southern District of Texas, Houston Division

August 28, 2025, Decided; August 28, 2025, Entered

CASE NO: 25-90138

Reporter
674 B.R. 732 *; 2025 Bankr. LEXIS 2117 **; 2025 LX 304624; 2025 WL 2484883

IN RE: GEDEN HOLDINGS, LTD., Debtor.

Counsel: **[**1]** For Geden Holdings, Ltd., Debtor: Edward Allison Clarkson, III, Okin Adams LLP, Houston, TX; J. Kelley Killorin Edwards, Okin Adams Bartlett Curry LLP, Houston, TX; Matthew Scott Okin, Okin Adams LLP, Houston, TX.

For US Trustee, 11, U.S. Trustee: Hector Duran, Jr, U.S. Trustee, Houston, Tx.

Judges: Alfredo R. Pérez, United States Bankruptcy Judge.

Opinion by: Alfredo R. Pérez

Opinion

[*735] MEMORANDUM OPINION DENYING PETITION FOR RECOGNITION (ECF NO. 1) AND DISMISSING MOTION TO STRIKE AS MOOT (ECF NO. 32)

BACKGROUND

Geden Holdings, Ltd. ("Geden") was registered in Malta on October 14, 2002 (ECF No. 26-1 at 2). Geden owned many subsidiary companies which operated ships in the international shipping market (ECF No. 26-1 at 2). On June 15, 2017, the First Hall of the Civil Court (the "Maltese Court") found Geden unable to pay its debts and ordered the dissolution and winding up of Geden (the "Maltese Proceeding") (ECF No. 26-1). Under Maltese law, after the windup order was entered, Geden was deemed insolvent as of September 16, 2016, the date the windup application was filed (ECF No. 26-8 at 5). On June 15, 2017, Mr. Paul Darmanin (the "First Liquidator") was appointed as liquidator (ECF No. 26-8 at 6). On September 12, 2018, **[**2]** the First Liquidator filed an application requesting the Maltese Court to revoke his assignment as liquidator (the "Application to Resign") and on September 19, 2018, the Maltese Court granted the Application to Resign (ECF No. 26-3).

On December 4, 2023, Dr. Reuben Balzan ("Dr. Balzan") was appointed by the Maltese Court as liquidator ("Liquidator") and foreign representative ("Foreign Representative") of Geden (ECF No. 26-2) and authorized by the Maltese Court to file for Chapter 15 relief [hereinafter, the "Chapter 15 Case"] (ECF No. 26-8 at 2). The actions that occurred between the granting of the Application to Resign and Dr. Balzan's **[*736]** appointment are the basis for the Chapter 15 Case and the related objection.

On April 28, 2025, Geden filed the Chapter 15 Petition for Recognition of Foreign Proceeding (the "Petition" or "Petition for Recognition") (ECF No. 1), requesting the Court recognize the Maltese Proceeding pursuant to *Section 1517 of the United States Bankruptcy Code* (the "Bankruptcy Code"). Advantage Award Shipping, LLC ("Advantage Award") filed an objection in response to the Petition (the "Objection") (ECF No. 23). Geden filed a Reply

to Advantage Award's Objection (ECF No. 33) and an Emergency Motion to Strike Advantage **[**3]** Award's Objection (the "Motion to Strike") (ECF No. 32). On June 3, 2025, Eclipse Liquidity, Inc. ("Eclipse") filed a Memorandum in Support of the Petition (the "Eclipse Memo in Support of Petition") (ECF No. 36). Before the Court is a contested Petition for Recognition of the Maltese Proceeding and the related Motion to Strike.

On June 4, 2025, the Court heard argument on the issue of recognition of the Maltese Proceeding (ECF No. 40). The Court took extensive testimony from Dr. Balzan (ECF No. 40). The Court admitted exhibits at ECF Nos. 26-1 through 26-8, 25-26, 25-28, 25-29, 25-31, 25-33, and 25-35 (ECF No. 40). The Court took judicial notice of ECF Nos. 25-1 through 25-25, 25-27, 25-30, 25-32, and 25-34. The Motion to Strike was continued to June 25, 2025 (ECF No. 40). Advantage Award's response deadline to the Motion to Strike was set for June 13, 2025, and Geden was given until June 20, 2025, to file a reply. The Court requested Geden provide a declaration with all the facts regarding property loaned to the estate as stated on the record. On June 13, 2025, Advantage Award filed an Objection to the Motion to Strike (ECF No. 45). On June 20, 2025, Geden filed a Reply to the Advantage **[**4]** Award Objection to the Motion to Strike (ECF No. 48) and a Brief on the property loaned to the estate (ECF No. 47), as requested by the Court at the June 4, 2025, hearing.

On June 25, 2025, the Court heard argument from both parties. The Court took the Motion to Strike and the Petition for Recognition under advisement (ECF No. 51).

JURISDICTION

28 U.S.C. § 1334 provides the District Courts with jurisdiction over this proceeding. *28 U.S.C. § 157(b)(1)* states "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under *subsection (a)* of this section, and may enter appropriate orders and judgments, subject to review under *section 158* of this title." This Court has jurisdiction over this proceeding as it is a core proceeding the Court can consider under *28 U.S.C. § 157(b)(2)(P)*. This proceeding has been referred to the Bankruptcy Court under General Order 2012-6. The Court has constitutional authority to enter final orders and judgments. *Stern v. Marshall, 564 U.S. 462, 486-87, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*. Venue is proper in this District pursuant to *28 U.S.C. § 1408*.

LEGAL STANDARD

Pursuant to *§ 1509(a) of the Bankruptcy Code*, "[a] foreign representative may commence a case under *section 1504* by filing directly with the court a petition for recognition of a foreign proceeding under *section 1515*." A petition **[**5]** for recognition that is properly filed by a foreign representative and meets the requirements of *§ 1515* is evaluated for recognition under *§ 1517*. *Section 1517 of the Bankruptcy Code* provides, in relevant part:

> **[*737]** (a) Subject to *section 1506*, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
>
> (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of *section 1502*;
>
> (2) the foreign representative applying for recognition is a person or body; and
>
> (3) the petition meets the requirements

> of section 1515.
>
> (b) Such foreign proceeding shall be recognized—
>
> (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests ["COMI"]; or
>
> (2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

11 U.S.C. § 1517(a)-(b). Section 1517 is subject to the public policy exception of § 1506, which states, "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. Section 1506 is a narrow exception intended to be invoked only under "exceptional circumstances **[**6]** concerning matters of fundamental importance for the United States." Lavie v. Ran (In re Ran), 607 F.3d 1017, 1021 (5th Cir. 2010) [hereinafter "*Ran-Circuit*"].

Subject to any constraints § 1506 might impose, use of the word "shall" in § 1517(a) makes recognition mandatory in instances where the requirements of § 1517 have been satisfied. In re Creative Fin. Ltd., 543 B.R. 498, 514 (Bankr. S.D.N.Y. 2016) [hereinafter "*Creative Finance*"]; *see* In re Millard, 501 B.R. 644, 653 (Bankr. S.D.N.Y. 2013) ("[b]ecause section 1517(a) is preceded by the word *shall*, it takes away judicial discretion from me in the first instance."). The burden of proof on the requirements of recognition under § 1517 is on the foreign representative. Ran (In re Ran), 607 F.3d at 1021.

I. Foreign Main Proceeding.

A "foreign main proceeding" means a foreign proceeding pending in the country where the debtor has the center of its main interests, otherwise referred to as COMI. 11 U.S.C. §§ 1517(b)(1), 1502(4). Chapter 15 does not define COMI. However, a debtor's COMI "lies where the debtor conducts its regular business, so that the place is ascertainable by third parties." In re Fairfield Sentry Ltd., 714 F.3d 127, 130 (2d Cir. 2013) [hereinafter "*Fairfield Sentry*"].

Because § 1517 is written in the present tense,[1] COMI is determined at the time the Chapter 15 petition is filed. Fairfield Sentry, 714 F.3d at 130; *See* United States v. Wilson, 503 U.S. 329, 333, 112 S. Ct. 1351, 117 L. Ed. 2d 593 (1992) ("Congress' use of a verb tense is significant in construing statutes"). According to the Fifth Circuit Court of Appeals,

> Congress's choice to use the present tense requires courts to view the COMI determination **[**7]** in the present, i.e. at the time the petition for recognition was filed. If Congress had, in fact, intended bankruptcy courts to view the COMI determination through a lookback period or on a specific past date, it could have **[*738]** easily said so. This is particularly significant because Congress is clearly capable of creating lookback periods in the Bankruptcy Code.

Ran (In re Ran), 607 F.3d at 1025. Therefore, consideration of a debtor's entire operational history and/or COMI determination based on the date of the initiation of the foreign proceeding is not the proper inquiry for the Court. Fairfield Sentry, 714 F.3d at 134. However, "to offset a debtor's ability to

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[1] 11 U.S.C. § 1517(b)(1) (Such foreign proceeding shall be recognized . . . as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests . . ..).

manipulate its COMI, a court may also look at the time period between the initiation of the foreign liquidation proceeding and the filing of the Chapter 15 petition." *Id. at 133*.

For speed and convenience reasons in situations where COMI is obvious and undisputed, *§ 1516(c)* presumes COMI is the place of the debtor's registered office.[2] However, this presumption is rebuttable. *Fairfield Sentry, 714 F.3d at 137*. According to the UNCITRAL Guide to Enactment of the Model Law on Cross-Border Insolvency:

> Article 16 establishes presumptions that allow the court to expedite the evidentiary process; at the same time they do not prevent, in accordance with the applicable **[**8]** procedural law, calling for or assessing other evidence if the conclusion suggested by the presumption is called into question by the court or an interested party.[3]

The court always has the power to make its own determination on recognition under *§ 1517*, notwithstanding *§ 1516*. *In re Basis Yield Alpha Fund (Master), 381 B.R. 37, 52 (Bankr. S.D.N.Y. 2008)*. The legislative history of *§ 1516* indicates the statutory presumption of *§ 1516(c)* may be of less weight in the event of a serious dispute. *Id. at 53*; *see In re SPhinX, Ltd., 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006)* [hereinafter "*SPhinX-Bankruptcy*"], *aff'd 371 B.R. 10 (S.D.N.Y. 2007)*. As a result, *§ 1516* "does not tie the hands of a court to examine the facts more closely in any instances where the court regards the issues to be sufficiently material to warrant further inquiry." *In re Basis Yield Alpha Fund (Master), 381 B.R. at 52*. "Even in the absence of an objection, courts must undertake their own jurisdictional analysis and grant or deny recognition under Chapter 15 as the facts of each case warrant." *Ran (In re Ran), 607 F.3d at 1021*; *see In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 389 B.R. 325, 335 (S.D.N.Y. 2008)* [hereinafter "*Bear Stearns-District*"]. Furthermore, at no time does the rebuttable presumption relieve the petitioner (here, Geden) of its burden of proof/risk of non-persuasion. *Bear Stearns-District, 389 B.R. at 334*.

Factors for the Court to examine when determining whether to rebut the presumption that COMI is debtor's place **[**9]** of registration or incorporation include:

> the location of the debtor's headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

SPhinX-Bankruptcy, 351 B.R. at 117. The flexibility inherent in Chapter 15 strongly suggests courts should not apply **[*739]** these factors mechanically and instead view the facts of the case in accordance with Chapter 15's emphasis on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor's value. *Id.* Additionally, the Second Circuit Court of Appeals has held any relevant activities, including liquidation activities and administrative functions, may be considered in the court's COMI analysis. *Fairfield Sentry,*

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[2] *11 U.S.C. § 1516(c)* (In the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests.).

[3] U.N. Comm'n on Int'l Trade Law, *Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency*, U.N. Doc. A/CN.9/Guide/2013, at 122 (2013).

714 F.3d at 133-34.

II. Foreign Nonmain Proceeding.

A foreign proceeding should be recognized as a "foreign nonmain proceeding if the debtor has an establishment within the meaning of *section 1502* in the foreign country where the proceeding is pending." *11 U.S.C. §§ 1517(b)(2)*, *1502(5)*. Establishment **[**10]** is defined as "any place of operations where the debtor carries out a nontransitory economic activity." *11 U.S.C. § 1502(2)*. Compared to the determination of COMI, Chapter 15 provides no evidentiary presumption in the determination of whether a debtor has an establishment in a particular jurisdiction for finding a foreign nonmain proceeding.

A "place of operations" is "a place from which economic activities are exercised on the market (i.e. externally) ...." *Lavie v. Ran, 406 B.R. 277, 284 (S.D. Tex. 2009)* [hereinafter "*Ran-District*"] (internal quotations marks omitted). Establishment has been described as a "local place of business," and to have an establishment in a country, the debtor must conduct business in that country. *In re Brit. Am. Ins. Co. Ltd., 425 B.R. 884, 914-15 (Bankr. S.D. Fla. 2010)* (quoting *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 131 (Bankr. S.D.N.Y. 2007)* [hereinafter "*Bear Stearns-Bankruptcy*"], *aff'd*, *389 B.R. 325 (S.D.N.Y. 2008)*). "Therefore, the terms 'operations' and 'economic activity' require showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just the maintenance of property." *Brit. Am. Ins. Co., 425 B.R. at 915*. The court's establishment analysis should focus on whether the debtor has an establishment in the foreign country when the foreign representative files for recognition under Chapter 15. *Ran, 406 B.R. 277 at 285* ("Because courts undertake the establishment analysis when the foreign **[**11]** representative files for recognition, it follows that the court should weigh only the evidence as it exists at the time of filing in the U.S. court.").

DISCUSSION

At issue is whether the Maltese Proceeding is subject to recognition under *§ 1517 of the Bankruptcy Code*. The Petition for Recognition is contested by the Advantage Award Objection (ECF No. 23). In response to the Objection, Geden filed the Motion to Strike (ECF No. 32). The Motion to Strike raises the issue of whether Advantage Award has standing (as a party in interest or creditor) to object to the Petition for Recognition. Furthermore, Geden alleges the Objection impermissibly attempts to preserve Advantage Award's right to personal jurisdiction while objecting to the substantive relief of the Petition.

The Court first addresses the Petition for Recognition. With respect to the arguments raised in the Motion to Strike, the Court notes recognition under *§ 1517* is not a "rubber stamp exercise," and the Court must make an independent determination as to whether the Maltese Proceeding meets the definitional requirements of the Bankruptcy Code. *Basis Yield Alpha Fund (Master), 381 B.R. at 40*; *see Bear Stearns-Bankruptcy, 374 B.R. at 126*. "Even in the absence of an objection, **[*740]** courts must undertake their own jurisdictional analysis and grant or deny **[**12]** recognition under Chapter 15 as the facts of each case warrant." *Ran (In re Ran), 607 F.3d at 1021*. In doing so, the Court may "consider any and all relevant facts (including facts not yet presented) . . .." *Basis Yield Alpha Fund (Master), 381 B.R. at 40*. Therefore, regardless of the Motion to Strike, the Court must

determine whether the Maltese Proceeding meets the requirements of *§ 1517 of the Bankruptcy Code*.

It is undisputed the Maltese Proceeding is a foreign proceeding under *§ 101(23)*.[4] Dr. Balzan as the foreign representative applying for recognition is a person or body under *§ 1517(a)(2)*, and the petition meets the requirements of *§ 1515*, as required by *§ 1517(a)(3)*. The relevant inquiry for the Court is whether the Maltese Proceeding is a foreign main or foreign nonmain proceeding.

I. Foreign Main Proceeding.

A. Application of the *§ 1516(c)* Presumption.

Geden argues the presumption established under *§ 1516(c)*[5] applies to the Petition for Recognition, as Advantage Award has provided no affirmative evidence to rebut the presumption and prove Geden's COMI is anywhere but Malta (Hr'g Tr., 8:3-4 (June 25, 2025)). It is undisputed Geden was registered in Malta in 2002 (ECF No. 26-1 at 2). According to the testimony of Dr. Balzan, when asked on cross examination if Geden was operated out of Turkey, Dr. Balzan replied "I couldn't answer that. I - I **[**13]** have no knowledge of that" (Hr'g Tr., 35:6-7 (June 4, 2025)). Geden argues this is the only testimony addressing Turkey, and it does not rebut the *§ 1516(c)* presumption.

As stated in the Legal Standard, the *§ 1516(c)* presumption is rebuttable, and while it can be used in "easy cases," reliance on the presumption is inappropriate in cases where there is a substantial dispute. *Creative Finance, 543 B.R. at 517*; *see also SPhinX-Bankruptcy, 351 B.R. at 112* (The legislative history of *§ 1516* indicates the statutory presumption of *§ 1516(c)* may be of less weight in the event of a serious dispute.). Advantage Award argues because the Chapter 15 Case is not an "easy case,"[6] and a substantial dispute exists regarding Geden's COMI,[7] the *§ 1516(c)* presumption does not apply. Additionally, Advantage Award argues the Court must follow *Ran-Circuit* and undertake its own jurisdictional analysis, granting or denying recognition as the facts of the Chapter 15 Case warrant. *See Ran (In re Ran), 607 F.3d at 1021*. In determining whether the *§ 1516(c)* presumption **[*741]** applies, the Court reviews the evidence submitted by both parties.[8]

Comparison of this Chapter 15 Case with another Chapter 15 petition for recognition of foreign proceeding in the Southern District of Texas helps the Court understand whether this Chapter 15 Case is an "easy case." **[**14]**

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[4] Hr'g Tr., 11:16-17 (June 25, 2025) - Advantage Award argument (Certainly, we don't oppose that the Malta proceeding is a real proceeding.).

[5] *11 U.S.C. § 1516(c)* (In the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests.).

[6] Hr'g Tr., 13:15-20 (June 25, 2025) - Advantage Award argument (I think by the fact that this is now our second hearing and there has already been a small mountain of papers filed in this case. I don't think anybody here would characterize this exactly -- I don't think anybody would characterize this as the easy case that the Court in *Creative Finance* was referring to.).

[7] Hr'g Tr., 13:24-14:5 (June 25, 2025) - Advantage Award argument (Again, I don't think that anybody could really characterize our disputing about COMI and the fact that I'm going to spend a decent chunk of time this afternoon talking about it is anything other than raising a substantial dispute. And the Court certainly can wrestle with the issue of whether or not there is sufficient evidence to have rebutted that presumption.).

[8] For example, see evidence of a dispute at ECF No. 26-5 at 31-33 (The Irrevocable Performance Guarantee, entered between Geden and Eclipse is on Geden letterhead that includes an address in Malta, but Geden mailing address listed in the document is in Istanbul, Turkey.).

See In re Telefónica del Perú S.A.A., No. 25-90022 (ARP) (Bankr. S.D. Tex. February 25, 2025) [hereinafter "*Telefónica del Perú*"]. For example, where debtor's registered offices are in Lima, Peru, and debtor has extensive connections with Peru,[9] debtor argued the § 1516(c) presumption should apply. *Petitioner's Declaration and Verified Petition for Recognition*, ECF No. 2-1 at 26-28 (Bankr. S.D. Tex., February 25, 2025) (filed in *Telefónica del Perú*, No. 25-90022). Based on the facts of *Telefónica del Perú*, the Court found debtor's COMI in Peru and the Peruvian proceeding to be a "foreign main proceeding" subject to recognition under §§ 1502(4) and 1517(b)(1). *Telefónica del Perú*, No. 25-90022, ECF No. 87 at 4 (Bankr. S.D. Tex., June 25, 2025) (order available on CM/ECF).

Here, Geden's complicated operational history, as discussed in more detail below, strengthens the need for the Court to make its determination based on specific facts. The Court cannot rely on the § 1516(c) presumption and must examine the facts of the Chapter 15 Case to determine whether to grant or deny the Petition for Recognition.

B. Factual Analysis of the Chapter 15 Case.

The Court analyzes the facts of the Chapter 15 Case to determine Geden's COMI as of April 28, 2025 (the "Petition Date") (ECF No. 1). *See* Fairfield Sentry, 714 F.3d at 130.

Geden argues Geden was registered as a corporation under Maltese law, the Maltese Court has been administering the Maltese Proceeding since 2017, and Dr. Balzan, the Foreign Representative, Liquidator, and sole person in control of Geden resides and works **[**15]** in Malta (ECF No. 33 at 6; Hr'g Tr., 9:4-17 (June 25, 2025)). Geden argues over the last nine years, Geden has had no other operations in any **[*742]** other jurisdiction and even before Dr. Balzan arranged funding and sought authority from the Maltese Court to bring the Chapter 15 Case, Malta was already Geden's only remaining locus of business activity (ECF No. 33 at 6-7). Additionally, Geden argues because the Maltese Proceeding was commenced in Malta, and it is possible Maltese law will apply to many of the actions Dr. Balzan will take, the law of Malta will apply to most disputes (Hr'g Tr., 9:21-24 (June 25, 2025)).

The Court must also address the Eclipse Memo in Support of Petition. As stated in *SPhinX-Bankruptcy*,

> Because their money is ultimately at stake, one generally should defer, therefore, to the creditors' acquiescence in or support of a proposed COMI. It is reasonable to assume that the debtor and its creditors (and shareholders, if they have an economic stake in the proceeding) can,

[9] Chapter 15 debtor is incorporated in Peru and, at all times since its incorporation, has maintained its registered offices and employees in Peru; chapter 15 debtor is operationally and functionally centered in Lima, Peru, organized under a centralized and interconnected senior management and, is subject to combined cash management and accounting functions in Peru; chapter 15 debtor's statutory books, records, and corporate documents are kept in Peru, have been public, and are therefore ascertainable by creditors and third parties; strategic and key operating decisions and key policy decisions for the Chapter 15 debtor are made by management located in Lima, Peru; the Chapter 15 debtor's corporate accounting, accounts payable, insurance procurement, accounts receivable, financial planning, internal auditing, marketing, treasury, real estate, research and development, and tax services are provided in Lima, Peru; the Chapter 15 debtor's finance, legal, human resources, payroll, billing, freight management, procurement and engineering services are carried out in Lima, Peru; key information technology and systems used by the Chapter 15 debtor are provided from Lima, Peru; the Chapter 15 debtor's cash management functions are maintained and directed from Lima, Peru; management and senior staff of the Chapter 15 debtor regularly attend meetings in Lima, Peru; the Chapter 15 debtor's assets are located in Peru; and capital expenditure decisions affecting the Chapter 15 debtor are managed in Lima, Peru (Case No. 25-90022, ECF No. 2-1 at 26-28).

> absent an improper purpose, best determine how to maximize the efficiency of a liquidation or reorganization and, ultimately, the value of the debtor[.]

SPhinX-Bankruptcy, 351 B.R. at 117. Here, however, Eclipse (a creditor) is funding **[**16]** the fees of Dr. Balzan's counsel,[10] and as discussed in more detail below, Eclipse is also a participant in litigation involving Geden in Pennsylvania state court. Therefore, the Court declines to defer to Eclipse's support of COMI in Malta. Instead, the Court independently examines the facts provided by Eclipse to determine whether to grant or deny the Petition for Recognition.

According to the Eclipse Memo in Support of Petition, Geden owned fifty subsidiaries that owned vessels, and each subsidiary was a Maltese company that filed annual consolidated financial statements in Malta (ECF No. 36 at 2). The vessels were financed by various banks, secured by Maltese ship mortgages, registered in Malta, and flew the Maltese flag (ECF No. 36 at 2). Geden paid tonnage taxes in Malta on Maltese-registered vessels, but Geden did not pay any taxes in Turkey on the income earned by the vessels it owned (ECF No. 36 at 2). Furthermore, while Geden Line, located in Turkey, served as a manager for Geden vessels, all transactions designated Geden Line as agents only (ECF No. 36 at 2). Geden Line represents it acts as a manager for several vessel owners in several countries (ECF No. 36 at 2). Additionally, **[**17]** Eclipse states Geden's Malta address was 85 St. John's Street, Valletta, Malta, and Geden bank statements from Citibank N.A. London were transmitted to that same address (ECF No. 36 at 3). According to Eclipse, "correspondence dated September 5, 2022 and December 7, 2023 purportedly sent by Geden on its letterhead to its bankers in London and in Turkey, listed its address as Geden Holdings, Ltd., 85 St. John's Street, Valletta, Malta" (ECF No. 36 at 3). Eclipse provides no evidence of this correspondence. Lastly, Eclipse states Geden filed its audited annual financial reports with the Maltese corporate authorities. However, the only audited annual financial report provided by Eclipse is from 2014 (ECF No. 36-2).

As discussed, the Court must determine COMI as of the Petition Date. *Ran (In re Ran), 607 F.3d at 1025*. Consideration of Geden's entire operational history and/or COMI determination based on the date of the initiation of the Maltese Proceeding is not the proper inquiry for the Court. *Fairfield Sentry, 714 F.3d at 134*. Therefore, the only evidence presented by Geden or Eclipse with respect to the relevant time **[*743]** period is Dr. Balzan's presence in Malta and work as Foreign Representative and Liquidator in Malta.

According to the Declaration of **[**18]** Dr. Balzan, based on his knowledge, the First Liquidator did not receive any documents or other information from Geden (ECF No. 26-8 at 6). In the Application to Resign, the First Liquidator stated he contacted ex-representatives of Geden and held a meeting with them and their foreign lawyers in Malta (ECF No. 26-3). The ex-representatives and shareholders of Geden were unwilling to participate in the process or cover the expenses, making it impossible for the First Liquidator to determine if there were any conflicts or accept the appointment (ECF No. 26-3). As a result, the Maltese Court granted the Application to Resign. The First Liquidator's appointment lasted from June 15, 2017, to September 19, 2018 (ECF No. 26-3; ECF No. 26-8 at 6). Dr. Balzan testified he assumes no liquidation activities took place

[10] Hr'g Tr., 43:2-4 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. just to be clear, Eclipse is funding the fees of your counsel as of today, correct? A. Yes.).

between the time the Maltese Court granted the Application to Resign, and December 2023, when Dr. Balzan was appointed Foreign Representative and Liquidator.[11]

Advantage Award argues because there is no dispute Geden was not operational for many years prior to the Petition Date, the only material activities that could create COMI in Malta are the actions of Dr. Balzan (Hr'g Tr., 18:5-19 **[**19]** (June 25, 2025)). Advantage Award relies on the interpretation of *Fairfield Sentry* as set out in *Creative Finance*:

> The effect of [the *Fairfield Sentry*] holding is that in instances in which a foreign representative has engaged in significant pre-U.S. filing work to operate (or even liquidate) the foreign debtor in the jurisdiction where the foreign insolvency proceeding was commenced (even if in a letterbox jurisdiction), the COMI can be found to have shifted from the foreign debtor's original principal place of business to the new locale... *Fairfield Sentry* now provides a means for U.S. recognition of letterbox jurisdiction insolvency proceedings—so long as the estate fiduciaries in those jurisdictions do enough work.

Creative Finance, 543 B.R. at 518. Advantage Award argues that before liquidation, Geden's business activities were based out of Turkey and Malta was a letterbox jurisdiction, so the Court must determine whether Dr. Balzan did enough work to shift Geden's principal place of business to Malta (ECF No. 23 at 13). At the June 4, 2025, hearing, Advantage Award stated, "I don't think you're going to hear the parties dispute the fact that at one point the COMI would have -- for Geden would have been in Turkey" (Hr'g Tr., 20:18-21 (June 4, 2025)). Counsel **[**20]** for Geden responded they have "not conceded the COMI would have been in Turkey or Istanbul specifically prior to the liquidation being filed" (Hr'g Tr., 22:23-25 (June 4, 2025)), and the complaint attached to the Declaration of Dr. Balzan was only offered to show Dr. Balzan looked at the document, not for the truth of the matter (Hr'g Tr., 37:13-19 (June 25, 2025)). Because the Court determines COMI as of the Petition Date, whether Geden's COMI was previously in Turkey is irrelevant. *See Ran (In re Ran), 607 F.3d at 1025* ("If Congress had, in fact, intended bankruptcy courts to view the **[*744]** COMI determination through a lookback period or on a specific past date, it could have easily said so."). For the Chapter 15 Case to qualify as a foreign main proceeding, the relevant inquiry is whether Dr. Balzan engaged in significant pre-Petition work to operate or liquidate Geden in Malta. *See Creative Finance, 543 B.R. at 518*; *Fairfield Sentry, 714 F.3d at 133-34* (The Second Circuit Court of Appeals has held "any relevant activities, including liquidation activities and administrative functions, may be considered in the court's COMI analysis."). To ensure no manipulation of Geden's COMI has occurred, the Court may also look at the period between the initiation of the foreign liquidation proceeding **[**21]** and the Petition Date.

According to the Declaration of Dr. Balzan, upon his appointment as Liquidator and Foreign Representative in December 2023, he learned Geden had been actively defending itself in Pennsylvania state court for many years (the "Pennsylvania State Court Litigation") (ECF No. 26-8 at 7). Subsequently, Dr. Balzan appealed the Pennsylvania State

[11] Hr'g Tr., 41:16-22 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. And it's also fair to say that to your knowledge, between September 19th, 2018 and when you were appointed as liquidator in December 2023, there were no liquidation activities occurring in Malta either, correct? A. Correct. I know that there was no liquidator appointed, so presumably I have to make -- I have to assume that no liquidation activities were taking place.).

Court Litigation.[12] Mr. Gaitas, who was also representing Eclipse in the Pennsylvania State Court Litigation against Geden, represented Dr. Balzan in the appeal.[13] On March 25, 2024, in response to Dr. Balzan's appeal of the Pennsylvania State Court Litigation, the Superior Court of Pennsylvania issued a show cause order (the "Show Cause Order"), directing Dr. Balzan to show cause why he has standing to appeal the order entered in Geden's favor (ECF No. 25-27). On April 8, 2024, Dr. Balzan filed a response to the Show Cause Order (ECF No. 25-28). The Superior Court of Pennsylvania found Dr. Balzan lacked standing to appeal the order entered in Geden's favor and on April 26, 2024, Dr. Balzan's appeal was dismissed (ECF No. 25-30). On June 4, 2024, Dr. Balzan filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania **[**22]** (ECF No. 25-31). On June 21, 2024, Dr. Balzan filed a Petition to the Supreme Court of Pennsylvania for Extraordinary Jurisdiction (ECF No. 25-33). On December 3, 2024, the Supreme Court of Pennsylvania denied Dr. Balzan's Petition for Extraordinary Jurisdiction (ECF No. 25-34). On January 21, 2025, the Supreme Court of Pennsylvania denied Dr. Balzan's Petition for Allowance of Appeal (ECF No. 25-32). As a result, Advantage Award argues the only action Dr. Balzan took during the relevant period was his unsuccessful attempt to intervene in the Pennsylvania State Court Litigation (Hr'g Tr., 26:8-11 (June 25, 2025)).

Geden filed the Petition for Recognition on April 28, 2025 (ECF No. 1). Dr. Balzan testified he reviewed the pleadings and documents submitted in the Pennsylvania State Court Litigation during the Chapter 15 Case, but he could not recall if he reviewed the pleadings and documents prior to the Chapter 15 Case.[14] Dr. Balzan **[*745]** testified he asked Eclipse, who is funding the fees of Dr. Balzan's counsel,[15] for information, but did not recall if he asked Eclipse to provide him with copies of documents Eclipse may have obtained from Geden in any prior litigation.[16]

According to the testimony **[**23]** of Dr. Balzan, general responsibilities as liquidator in a Maltese proceeding include identifying creditors and assets, paying creditors, paying taxes, and holding creditor meetings (Hr'g Tr., 32:5-24 (June 4, 2025)). However, Dr. Balzan testified in his role as Liquidator of the Maltese Proceeding, he has not paid any taxes,

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[12] ECF No. 26-8 at 13; Hr'g Tr., 72:10-14 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. So after you were appointed as Geden's liquidator in Malta, you then sought to appeal the Pennsylvania trial court's dismissal of all counts against Geden on behalf of Geden, correct? A. Correct.).

[13] Hr'g Tr., 72:15-20 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. And you represented [sic] Mr. Gaitas to represent you in that action, correct? A. Correct. Q. And at the same time, Mr. Gaitas was representing Eclipse who was suing Geden in that action, correct? A. Correct.).

[14] Hr'g Tr., 67:17-23 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. Did you ever review any pleadings, any documents that were submitted by any of the defendants in the Pennsylvania actions? A. You mean going all the way back to 2020 or prior to that? Q. Going back to 2020. A. I mean, I have reviewed them now during these Chapter 15 proceedings. I don't recall if I had already reviewed them prior to the Chapter 15 proceedings....).

[15] Hr'g Tr., 43:2-4 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. just to be clear, Eclipse is funding the fees of your counsel as of today, correct? A. Yes.).

[16] Hr'g Tr., 66:25-67:16 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. Is it true that you have never asked Eclipse to provide you with discovery -- documents that they obtained in discovery in any prior litigation regarding Geden, Advantage, or anybody related to that? A. No, it's probably not entirely true. When I was contacted -- when I was in contacts with their lawyers, I -- I was asking for information. So I'm -- I know I did ask for information to be able to form my own opinion on whether -- of what was happening and the action I should be taking -- taking as liquidator, so I did ask them for information. Q. But did you ask them to provide you with copies of any documents they may have obtained, for example, from Geden Holdings, Limited, in any litigation that they had instituted prior? A. I don't recall (indiscernible) for that specific information, but I do recall that I (indiscernible) for information.).

brought any legal actions outside of the Chapter 15 Case, convened any creditors meetings, or reached out to any former officers of directors of Geden (Hr'g Tr., 33:2-34:1 (June 4, 2025)). Furthermore, since his appointment as Liquidator and Foreign Representative sixteen months ago, Dr. Balzan has not sought discovery of any parties in a country other than the United States.[17]

In support of Advantage Award's argument that Dr. Balzan has not engaged in material activities sufficient to establish COMI in Malta, Advantage Award compares the actions of Dr. Balzan with the actions of the liquidator and foreign representative in *Creative Finance* (Hr'g Tr., 18:20-25 (June 25, 2025)). In *Creative Finance*, the liquidator did not collect any assets, liquidate any assets, shut down any businesses, or pay any taxes. According to the testimony of Dr. Balzan, he has also not **[**24]** completed any of these actions (Hr'g Tr., 19:3-18 (June 25, 2025)).

In response, Geden argues the Chapter 15 Case is distinguishable from *Creative Finance*[18] because Geden is not trying to manipulate COMI, and the court in *Creative Finance* used evidence of the inaction of the liquidator to respond to the idea COMI was being manipulated by *Creative Finance* insiders (Hr'g Tr., 39:24-40:1 (June 25, 2025)). However, the court in *Creative Finance* explicitly states "bad faith...was not germane to this Court's recognition analysis.... [R]ecognition turned solely on the requirements of section 1517, and the Liquidator's failure to show a COMI (or establishment) in the BVI, by reason of his minimal effort in **[*746]** managing the Debtors' affairs." *Creative Finance, 543 B.R. at 522*. Therefore, this Court finds it appropriate to analyze the actions of Dr. Balzan in light of the actions the court in *Creative Finance* determined were not material activities sufficient to find COMI in the jurisdiction where the activities took place.

The court in *Creative Finance* held if compliance with the statutory duties of the liquidator required material effort, COMI could have been established. *Creative Finance, 543 B.R. at 511*. However, even the most basic business activities, "such **[**25]** as getting bank records, ledgers, journals and backup documents for cash receipts and expenditures," were not undertaken. *Id.* As a result, the activities of the liquidator fell short of anything that could be characterized as material effort. *Id.* Here, Dr. Balzan testified he has not satisfied what he considers to be the general responsibilities of a liquidator in a Maltese proceeding (Hr'g Tr., 32:5-24; 33:2-34:1 (June 4, 2025)).[19] Therefore, the actions of Dr. Balzan are insufficient to establish Geden's COMI in Malta as of the Petition Date. Additionally, there is no evidence COMI has been manipulated by Geden. *See Fairfield Sentry, 714 F.3d at 133* ("To offset a debtor's ability to manipulate its COMI, a court may also look at the time period between the initiation of the foreign liquidation proceeding and the filing of the Chapter 15 petition."). Based on the facts of the Chapter 15 Case, the Maltese Proceeding is not recognized as a foreign main proceeding subject to recognition under the Bankruptcy Code.

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[17] Hr'g Tr., 77:8-21 (June 4, 2025) - Advantage Award cross examination of Dr. Balzan (Q. In those 16 months between when you were appointed and today, you have not sought discovery of any parties in a country other than the United States, correct? A. Correct.).

[18] This Chapter 15 Case is distinguishable from *Creative Finance* in that the Court does not attribute any bad faith to Dr. Balzan. To the contrary, Dr. Balzan has acted with the utmost good faith and professionalism, as demonstrated by his candid testimony.

[19] Dr. Balzan's testimony may be explained by the fact his appointment came after many years of inactivity in the Maltese Proceeding. Nevertheless, while inactivity and the passage of time may be an explanation, it is not an excuse.

II. Foreign Nonmain Proceeding.

In contrast to COMI, the existence of an "establishment" is a factual question, with no presumption in its favor. *Ran (In re Ran), 607 F.3d at 1026* (quoting *Bear Stearns-District, 389 B.R. at 338*). For Geden to have an "establishment" in Malta, Geden **[**26]** must have (1) had a place of operations in Malta and (2) been carrying out a nontransitory economic activity in Malta as of the Petition Date. *See Ran (In re Ran), 607 F.3d at 1027*.

According to Geden, control of Geden rests with the Maltese Court and Dr. Balzan, all economic activity of Geden should be under the Maltese Court and Dr. Balzan, and major decisions in the Maltese Proceeding must be approved by the Maltese Court (ECF No.33 at 7). As a result, Geden argues the material and substantive activities of Dr. Balzan in Malta demonstrate Geden has a local and non-transitory place of business, and therefore, an establishment, in Malta (ECF No. 33 at 7-8). However, based on the same evidence that led the Court to conclude the Maltese Proceeding is not a foreign main proceeding, the Maltese Proceeding is also not a foreign nonmain proceeding under *§§ 1502* and *1517 of the Bankruptcy Code*. There is no evidence Geden had a place of operations in Malta as of the Petition Date. There is no evidence Geden was conducting business in Malta as of the Petition Date. *Brit. Am. Ins. Co., 425 B.R. at 914-15*. Finally, there is no evidence the actions of Dr. Balzan had an effect on the Malta marketplace as of the Petition Date, or rose beyond mere incorporation, record-keeping, or maintenance of property. **[**27]** [20] *Id. at 915* ("[T]he terms 'operations' and 'economic **[*747]** activity' require showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just the maintenance of property."). Based on the facts of the Chapter 15 Case, the Maltese Proceeding is not recognized as a foreign nonmain proceeding subject to recognition under the Bankruptcy Code.

III. The Motion To Strike.

Because the Petition for Recognition is denied and the Maltese Proceeding is not recognized under Chapter 15 of the Bankruptcy Code, the Motion to Strike is moot. Therefore, the Court does not need to address the issues of standing or personal jurisdiction raised by Geden in the Motion to Strike.

CONCLUSION

For the reasons stated, the Maltese Proceeding is not recognized as a foreign main or foreign nonmain proceeding under the Bankruptcy Code. Therefore, the Petition for Recognition is DENIED.

Because the Petition for Recognition is denied, the associated Motion to Strike is DISMISSED AS MOOT

A SEPARATE ORDER WILL ISSUE.

SIGNED 08/28/2025

/s/ Alfredo R. Pérez

Alfredo R. Pérez

United States Bankruptcy Judge

[EDITOR'S NOTE: The following court-provided text does not appear at this cite in B.R.]

[*none] ORDER DENYING PETITION FOR RECOGNITION (ECF NO. 1) AND

[20] Hr'g Tr., 27:22-28:4 (June 25, 2025) - Advantage Award argument (Geden did not keep records or an office in Malta or maintain property in Malta.).

DISMISSING MOTION TO STRIKE AS MOOT (ECF [28] NO. 32)**

For the reasons stated in the Memorandum, the Petition for Recognition is DENIED.

Because the Petition for Recognition is denied, the associated Motion to Strike is DISMISSED AS MOOT

SIGNED 08/28/2025

/s/ Alfredo R. Pérez

Alfredo R. Pérez

United States Bankruptcy Judge

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In re Iovate Health Scis. Int'l Inc.

United States Bankruptcy Court for the Southern District of New York

September 12, 2025, Decided

Chapter 15, Case No. 25-11958 (MG)

Reporter
673 B.R. 516 *; 2025 Bankr. LEXIS 2284 **; 2025 LX 391718; 2025 WL 2630487

In re: ***IOVATE HEALTH SCIENCES INTERNATIONAL INC.***, ***et al.***, Debtors in a Foreign Proceeding.

Counsel: [1]** For Foreign Representative: Steven W. Golden, Esq., Jeffrey M. Dine, Esq., Mary F. Caloway, Esq., Victoria A. Newmark, Esq., PACHULSKI STANG ZIEHL & JONES LLP, New York, New York.

Judges: MARTIN GLENN, CHIEF UNITED STATES BANKRUPTCY JUDGE.

Opinion by: MARTIN GLENN

Opinion

[*519] MEMORANDUM OPINION GRANTING MOTION FOR PROVISIONAL RELIEF

MEMORANDUM OPINION GRANTING MOTION FOR PROVISIONAL RELIEF

MARTIN GLENN

CHIEF UNITED STATES BANKRUPTCY JUDGE

The Court has already entered an order (ECF Doc. # 20) granting the motion ("Motion," ECF Doc. # 7) for provisional relief brought by ***Iovate Health Sciences International Inc.*** ("***Iovate International***"), **[*520]** in its capacity as the authorized foreign representative (the "Foreign Representative") of itself, ***Iovate Health Sciences*** USA Inc. ("***Iovate*** USA"), and Northern Innovations Holding Corp. ("Northern Innovations") (collectively, the "Debtors"). The Court now writes separately to explain its reasoning in granting provisional relief. This is the third recent Chapter 15 case before this Court in recent months which has involved Canadian entities in a Canadian insolvency proceeding where one of the entities in the debtor group was an American corporation and the Court determined that COMI of the **[**2]** American companies was in Canada. *See* ***In re*** *Giftcraft Ltd., No. 25-11030 (MG), 2025 Bankr. LEXIS 1350, 2025 WL 1583480, at *1 (Bankr. S.D.N.Y. June 4, 2025)*; *Oak and Fort and Affiliated Entities*, Case No. 25-11282, ECF Doc. # 13. The Court writes to address a recurrent issue: when the presumption that an entity's COMI is in the jurisdiction of its registered office can be overcome.

In support of its Motion, counsel for the (proposed) Foreign Representative submitted two declarations by Wesley Parris, CEO of the proposed foreign representative, in support of the motions for provisional and final relief ("Parris Decl. 1," ECF Doc. # 5, and "Parris Decl. 2," ECF Doc. # 16); and a declaration by Harvey Chaiton, a partner at Chaitons LLP, concerning Canadian insolvency law ("Chaiton Decl.," ECF Doc. # 6). All declarations were admitted into evidence during the September 10, 2025 hearing on the Motion. The Foreign Representative also filed a recognition motion

("Recognition Motion," ECF Doc. # 4) seeking, among other things, recognition of the Canadian Proceeding (defined *infra*) as the foreign main proceeding (or, in the alternative, the foreign nonmain proceeding) of each of the Debtors. No one challenged the Motion for provisional relief.

For the following reasons, the Court has found that the Foreign Representative **[**3]** has shown that the foreign (Canadian) insolvency proceeding is likely to be found to be the foreign main proceeding for each of the Debtors; that failing to grant the provisional relief would have resulted in imminent irreparable harm to the Debtors; that the balance of harms tipped in favor of the Debtors; and that the public interest weighed in favor of granting the relief.

I. BACKGROUND

A. Company Background

The Debtors, together with their non-debtor affiliates (together, "***Iovate*** Group"), comprise a health and wellness business based in Oakville, Ontario, Canada, specializing in active nutrition and weight management products, specifically supplements and vitamins. (Parris Decl. 1 ¶ 4.) Initially headquartered in Mississauga, Ontario, the ***Iovate*** Group began as a direct-to-consumer mail order business, and eventually expanded; now, its products are distributed in over 90 countries. (*Id.* ¶ 5.) The ***Iovate*** Group manufactures and distributes its products through third-party co-manufacturers and a network of domestic and international distribution partners. (*Id.* ¶ 6.) Its products are shipped from facilities in Canada, the United States, Belgium, and Australia, and are sold through retail, **[**4]** online, and distributor channels globally. (*Id.*)

As of the date of filing of their Chapter 15 cases (September 9, 2025), ***Iovate*** International leases its corporate head office in Oakville, Ontario, Canada (the "Oakville Headquarters"). (*Id.* ¶ 7.) None of the Debtors lease any other real property. (*Id.*) Parris and the Debtors' other management work out of the Oakville Headquarters. (*Id.*) ***Iovate*** International employs approximately 165 people in Canada and two people in the United Kingdom. **[*521]** (*Id.*) (Parris also states that all of ***Iovate*** International's employees are located in Ontario. (*Id.*)) Most of ***Iovate*** Group's operations are conducted through ***Iovate*** International. (*Id.* ¶ 8.) ***Iovate*** Group's inventory and raw materials are owned by ***Iovate*** International (as is most of ***Iovate*** Group's cash, non-United States accounts receivables, and other assets other than intellectual property) and its intellectual property is owned by Northern Innovations. (*Id.*) ***Iovate*** International is an Ontario corporation governed by the *Ontario Business Corporations Act* and its registered office is located in Oakville, Ontario, Canada. (*Id.* ¶ 9.)

Iovate USA employs approximately 11 people in the United States, most of **[**5]** whom are salespeople. (*Id.* ¶ 7.) ***Iovate*** USA, generally speaking, is responsible for overseeing warehousing and third-party logistics for ***Iovate*** Group's non-Canadian customers and maintains ***Iovate*** Group's relationships with United States-based customers. (*Id.* ¶ 8.) ***Iovate*** USA's principal asset is accounts receivable from United States-based customers, which are deposited into New York-based bank accounts with HSBC USA but swept daily into ***Iovate*** International's Toronto-based concentration account with Royal Bank of Canada ("RBC"). (*Id.*) ***Iovate*** USA is a Delaware limited liability company with its registered office in Wilmington, Delaware. (*Id.* ¶ 9.)

Northern Innovations does not have any

employees. (*Id.*) It is an Ontario corporation governed by the *Ontario Business Corporations Act* and its registered office is in Oakville, Ontario, Canada. (*Id.* ¶ 9.)

All of the Debtors are headquartered in Canada at the Oakville Headquarters. (*Id.*) The Debtors' officers and senior management are all located in either Canada or China. (*Id.* ¶ 11.) ***Iovate*** International centrally manages all corporate activities of the ***Iovate*** Group from the Oakville Headquarters outside of Toronto. (*Id.* ¶ 10.) ***Iovate*** International's **[**6]** CEO, Parris, is primarily responsible for the direction of the Debtors' corporate, management, legal, investment, and strategic functions, all of which he manages from the Oakville Headquarters. (*Id.*) The Debtors' operations are highly integrated and share management and headquarters in Oakville, Ontario, Canada. (*Id.* ¶ 12.) All accounting, finance, and human resource functions for the Debtors are centralized and managed from the head office in Oakville, where payroll is also processed for all Canadian and U.S. operations. (*Id.*) Specifically, Parris states that: the Debtors' senior management team has historically been located in Canada; all creative, strategic, and key operating decisions and key policy decisions are made by and/or subject to approval from the ***Iovate*** Group's senior management located in Canada; key human resources decisions pertaining to, *inter alia*, payroll budgets and augmentation or reduction of employee headcount are subject to the approval of the Debtors' senior management located in Canada; key accounting decisions and all plans, budgets, and financial projections are subject to the approval of the Debtors' senior management located in Canada; planning, budgeting, **[**7]** management of tax, treasury, and cash management functions, and preparation of financial projections for the Debtors is done from the Oakville Headquarters; all material and/or long-term contracts and expenses are subject to the approval of senior management located in Canada; marketing and business development initiatives are overseen from the Oakville Headquarters; corporate governance and regulatory compliance for the Debtors is overseen from its management team located at the Oakville Headquarters; and meetings for management and senior staff of the Debtors, are regularly held at **[*522]** the Oakville Headquarters; and senior management and all sales and operations staff report to their respective senior executives, who, ultimately, report to the senior management of the Debtors located at the Oakville Headquarters. (*Id.* ¶ 36.)

An extract of the ***Iovate*** Group's organizational chart (including both Debtors and non-Debtors) is as follows:



(*Id.* ¶ 12.) ***Iovate*** USA wholly owns seven Delaware limited liability companies, none of which are debtors at this time, but which counsel for the Foreign Representative indicated may become debtors before the current Debtors' proceedings are over.[1] Apart from **[**8]** *de minimis* cash holdings, these Delaware subsidiaries do not have assets or liabilities. (*Id.* ¶ 13.) However, some of them have agreed to terms of service with Amazon.com as third party sellers and are actively selling to Amazon thereunder. (*Id.*) The Debtors' parent company, Xiwang ***Iovate***

[1] Each of those non-debtor entities are incorporated in the U.S. The COMI of each of those entities will have to be evaluated if they become debtors in the Canadian proceedings and Chapter 15 recognition is sought here.

Holdings Company Limited ("Xiwang ***Iovate***"), is a Canadian corporation that directly has a one-hundred percent ownership interest in the common stock of the Debtors. (*Id.* ¶ 36.)

B. Debtors' Capital Structure

1. Secured Debt

Iovate International entered into an amended and restated credit agreement dated June 30, 2021 (as amended, the "Credit Agreement"), with HSBC Bank Canada (now Royal Bank of Canada ("RBC")), as administrative agent (in such capacity, the "Administrative Agent"), and HSBC Bank Canada, the Toronto-Dominion Bank, Bank of China (Canada), Bank of Montreal, National Bank of Canada, Canadian Western Bank, and the Bank of Nova Scotia, as syndicated lenders (together, the "Lenders"). (*Id.* ¶ 14.) The Credit Agreement has been amended ten times, most recently by an amendment dated February 28, 2025. (*Id.*) The Credit Agreement provides for a revolving credit facility and a term loan facility (together, **[**9]** the "Credit Facilities"). (*Id.*) During the hearing on the Motion, counsel for the Foreign Representative stated that the Credit Agreement is governed by Canadian law. As security for the obligations under the Credit Agreement, the Debtors and related affiliates granted the Lenders a comprehensive security package. (*Id.* ¶ 15.) As of August 31, 2025, approximately USD $100,606,023 of principal was owing under the term loan facility, USD $14,000,000 **[*523]** was owing under the revolving loan facility, and an additional USD $1,179,465 of default interest had accrued month-to-date for a total amount owing of USD $115,785,488. (*Id.* ¶ 16.)

2. Unsecured Debt

Iovate International is an obligor on a series of unsecured promissory notes (the "Unsecured Notes") dated between March 31, 2022 and June 20, 2025. (*Id.* ¶ 17.) As of the Petition Date, ***Iovate*** International owes approximately CAD $13.8 million to Xiwang Foodstuffs (Qingdao) Co., Ltd. and approximately CAD $13.5 million to XW Foodstuffs Co., Ltd. (*Id.*)

3. Trade Payables

As of September 5, 2025, the Debtors estimate that they owe approximately CAD $33.8 million to trade creditors, of which approximately CAD $2.5 million is owed by ***Iovate*** USA. (*Id.* ¶ **[**10]** 18.)

C. Events Leading to Canadian Insolvency Proceeding

On July 8, 2024, ***Iovate*** International, the Administrative Agent and the Lenders entered into a default agreement (as amended, the "Default Agreement") following ***Iovate*** International's failure to make a scheduled principal payment of approximately USD $3.27 million that had become due on June 30, 2024. (*Id.* ¶ 19.) The Default Agreement did not constitute a waiver of the default under the Credit Agreement but confirmed that the Lenders reserved all of their rights and remedies under the Credit Agreement and related security documents. (*Id.*) ***Iovate*** International, the Administrative Agent, and the Lenders entered into a forbearance agreement dated September 24, 2024, which forbearance agreement was subsequently amended a number of times. (*Id.* ¶ 20.) ***Iovate*** International is in default under the Forbearance Agreement. (*Id.*)

The Debtors are parties to various lawsuits in the U.S. and Canada, both as plaintiffs and as defendants. (*Id.* ¶ 21.) The most significant suit is litigation brought by Orgain, Inc. in the United States District Court for the Central District of California and in other courts in the U.S. and Canada (the "Orgain Litigation"). **[**11]** (*Id.*) On April 17, 2024, judgment was granted in favor of Orgain

against ***Iovate*** International and ***Iovate*** USA in the amount of USD $10,035,481 in damages, together with costs. (*Id.* ¶ 22.) The parties subsequently entered into settlement negotiations, which resulted in a May 3, 2024 agreement in principle regarding the settlement terms; however, disputes later arose regarding whether a binding settlement had been reached. (*Id.*) On August 30, 2024, Orgain brought a motion to enforce the settlement agreement. (*Id.* ¶ 23.) The California district court granted that motion and, on November 17, 2024, issued an Amended Judgment awarding Orgain USD $12,500,000 in satisfaction of its claims (the "Amended Judgment"). (*Id.*) ***Iovate*** International and ***Iovate*** USA are jointly and severally liable for payment of the Amended Judgment. (*Id.*) Since entry of the Amended Judgment, Orgain has since sought its enforcement against the Debtors by attempting to garnish receivables from certain of the Debtors' major customers, including Walmart, Amazon, GNC, and Vitamin Shoppe. (*Id.* ¶ 24.) In particular, on June 27, 2025, Orgain obtained a writ of garnishment against Walmart Inc. ("Walmart"), which writ was not **[**12]** served upon Walmart until August. (*Id.* ¶ 25.) On August 25, 2025, ***Iovate*** International and ***Iovate*** USA were unsuccessful in obtaining an order of the Circuit Court of Benton County, Arkansas (the "Arkansas Court") quashing Orgain's writ of garnishment issued to Walmart. (*Id.*) Walmart has been withholding payments to ***Iovate*** since **[*524]** about August 4, 2025; payments from Walmart to ***Iovate*** have averaged about $5.8 million per month (year to date) and, as of September 5, 2025, the outstanding accounts receivable from Walmart to the Debtors is approximately $15.4 million. Payments remitted by Walmart are a critical element of Debtors' cash flow as well as collateral for the secured Credit Facility. (Parris Decl. 2 ¶ 4.) Walmart remits payments owed to the Debtors to an ***Iovate*** USA bank account in New York for both Walmart and Sam's Club purchases. The Debtors use the payments from Walmart to fund a significant portion of their day-to-day operations, including payroll and accounts payable. (*Id.* ¶ 5.) And the Debtors' Credit Facility is secured by a first-priority lien on essentially all of their assets, including accounts receivable from Walmart and other customers—hence the Lenders' statement **[**13]** that their collateral is prejudiced in light of the Arkansas court's refusal to quash Orgain's writ. (*Id.* ¶ 6.)

On August 27, 2025, the Debtors received letters from the Lenders (the "Demand Letters") which asserted that several Events of Default under the Credit Agreement had occurred, demanded immediate repayment of the outstanding indebtedness under the Credit Agreement, and delivered notices of intention to enforce security under Section 244 of Canada's Bankruptcy and Insolvency Act ("BIA"). (Parris Decl. 1 ¶ 26.) In the Demand Letters, the Lenders stated that, as a result of the Arkansas Court's refusal to quash the writ, they had concluded that their collateral is, or may be, prejudiced to the full extent of the amount of the Orgain writ; they claimed that such diminution of their collateral was untenable. (*Id.* ¶ 27.) The Lenders made it clear that a restructuring filing was necessary. (*Id.* ¶ 28.)

Following extensive discussion with key stakeholders, including the Lenders, the Debtors determined that it was in the best interests of their stakeholders to commence a proceeding under the BIA ("Canadian Proceeding") before the Ontario Superior Court of Justice (Commercial List (the "Canadian Court") to pursue an orderly restructuring under the **[**14]** supervision of the Canadian Court, and to seek recognition thereof in the United States. (*Id.* ¶ 29.) The Canadian Proceeding provided the Debtors

with a stay of proceedings that is necessary to preserve the Debtors' enterprise value, protect their relationships with key customers, and allow for the development of a restructuring proposal for the benefit of all stakeholders. (*Id.*)

D. Canadian Proceeding

On September 5, 2025, ***Iovate*** International, ***Iovate*** USA, and Northern Innovations each filed a Notice of Intention to Make a Proposal (an "NOI") pursuant to section 50.4 of the BIA. (*Id.* ¶ 30.) KSV Restructuring Inc. ("KSV") was appointed as the Debtors' proposal trustee (the "Proposal Trustee"). (*Id.*) That same date, the Office of Superintendent of Bankruptcy Canada issued for each Debtor a *Certificate of Filing of a Notice of Intention to Make a Proposal Subsection 50.4* (the "Certificates of Filing") which, pursuant to subsection 69(1) of the BIA, stayed all proceedings against the Debtors (the "Canadian Stay"). (*Id.*)

On September 9, 2025, the Canadian Court granted an order (the "Foreign Representative Order") that, among other things, authorized and empowered ***Iovate*** International to act as foreign representative of the Debtors. (*Id.* ***[**15]*** ¶ 31.)

Parris testifies that each of the Debtors has property in the U.S. in the form of a retainer in counsel's NY trust account, and all of ***Iovate*** USA's cash (including payments made to the ***Iovate*** Group by U.S.-based **[*525]** customers) is held in NY bank accounts with HSBC USA, which cash is swept into the ***Iovate*** Group's Canadian bank accounts on a daily basis. (*Id.* ¶ 33.)

E. Provisional Relief Motion

The Foreign Representative requested as interim relief, among other things, that this Court immediately order the application of *sections 361*, *362*, and *365(e) of the Bankruptcy Code* to these Chapter 15 Cases, because absent such relief, the Debtors may be exposed to a potentially adverse action in the United States by a judgment creditor seeking enforcement of a substantial judgment in disregard of the priority and rights of other creditors. (Motion ¶ 2.) In particular, Orgain is seeking to enforce a $12.5 million (plus interest) judgment in state court proceedings in Arkansas (and other places); Orgain's efforts have already caused Walmart, one of Debtors' largest customers, to withhold millions of dollars of payments it owes to Debtors. (*Id.* ¶ 3.)

Additionally, the Debtors face the threat of payment demands from the Lenders. On August **[**16]** 27, 2025, the Debtors received letters from the Lenders that asserted several Events of Default under the Credit Agreement had occurred, demanded immediate repayment of the outstanding indebtedness under the Credit Agreement, and delivered notices of intention to enforce security under section 244 of the BIA. (*Id.* ¶ 17.) And the Debtors' commencement of the Canadian Proceeding and these Chapter 15 Cases may trigger an event of default under certain of the Debtors' critical executory contracts, which contain arguably unenforceable provisions permitting termination upon the Debtors' filing of a case under any section or chapter of the Bankruptcy Code. (*Id.* ¶ 18.) The provisional relief requested by the Debtors is, they claim, required to prevent individual creditors from acting to frustrate the purpose of the Canadian Proceedings by disregarding the Canadian Stay. (*Id.* ¶ 4.)

The Foreign Representative argues that the sought-after provisional relief is necessary to retain the status quo until the Court rules on the recognition motion. (*Id.* ¶¶ 21-23.) It also argues that the relief is urgently needed

because, without the limited application of section 362, there is a real and significant risk that Orgain will use the writ **[**17]** of garnishment procedure in Arkansas to appropriate assets of the Debtors that are needed for its operations and that are within its Lenders' United States-perfected security interests. These acts would interfere with Debtors' operations and with the Canadian Court's ability to adjudicate the Canadian Proceeding, which would not only hinder the orderly administration of the Debtors' affairs but threaten to unravel the restructuring that the Debtors seek to implement pursuant thereto. (*Id.* ¶ 25.)

The Foreign Representative claims that it is likely that the Canadian proceeding will be recognized as a foreign main proceeding, for reasons discussed in its motion for recognition (discussed below). For the reasons discussed above, the Foreign Representative argues that the Debtors will suffer irreparable harm absent the provisional relief, that the balance of the hardships cuts in favor of the Debtors, and that the creditors as a whole will benefit from the grant of the relief because the relief will preserve the Debtors' estates. And the Foreign Representative states that the public interest favors granting relief because it will promote cooperation between jurisdictions in cross-border **[**18]** insolvencies.

The Motion was not contested.

F. Recognition Motion

The Recognition Motion is relevant insofar as it concerns the likelihood of the **[*526]** Foreign Representative's success at showing that the Canadian Proceeding is each Debtor's foreign main (or nonmain) proceeding.

The Foreign Representative argues that each of the Debtors is eligible to be a debtor under section 109(a) of the Code because each has property in the U.S. in the form of a retainer in counsel's New York trust account in the amount of $150,000. (Recognition Motion ¶ 39.)

It also argues that the Canadian Proceeding is a "foreign proceeding" because, as set out in the Chaiton Declaration, it meets the requirements of section 101(23) of the Code and caselaw interpreting it. (*Id.* ¶¶ 41-52.)

It claims that the Canadian Proceeding is the foreign main proceeding because each debtor's COMI is in Canada—specifically, Oakville, Ontario—for the reasons set forth in the Parris Declaration having to do with the location of the Debtors' management. (*Id.* ¶ 54.) The Foreign Representative does not address the fact that a foreign debtor's COMI is presumed to be in the place of incorporation and that one of the Debtors is incorporated in the U.S.

The Foreign Representative **[**19]** argues in the alternative that the Canadian proceeding should be recognized as a foreign nonmain proceeding, as the Debtors all have establishments in Canada. By "establishment," the Foreign Representative means a place of operations where the debtor carries out non-transitory economic activity—*i.e.*, has a local place of business. (*Id.* ¶ 57.)

The Foreign Representative also asserts that it falls within the definition of "foreign representative" under section 1517 of the Code because it is a "person or body . . . authorized by" the Canadian court "to administer the reorganization" of the Debtors, including by filing C15 petitions. (*Id.* ¶¶ 59-60.)

II. LEGAL STANDARD

A. Eligibility to File Under Chapter 15

The Second Circuit has held that foreign debtors seeking Chapter 15 relief must satisfy the debtor eligibility requirements set forth in section 109(a) of the Bankruptcy Code. *See* Drawbridge Special Opportunities Fund LP v. Barnet (**In re** Barnet), 737 F.3d 238, 247-51 (2d Cir. 2013). Section 109(a) 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 the Code. 11 U.S.C. § 109(a). Section 109(a) does not address how much property must be present or when or how long property must have a situs in the United States. "As a general matter, courts that have construed the 'property' requirement **[**20]** in Section 109 'with respect to foreign corporations and individuals have found the eligibility requirement satisfied by even a minimal amount of property located in the United States.'" ***In re*** B.C.I. Finances Pty Ltd., 583 B.R. 288, 294 (Bankr. S.D.N.Y. 2018) (citing ***In re*** Aerovias Nacionales de Colombia S.A., 303 B.R. 1, 8-9 (Bankr. S.D.N.Y. 2003)); *see also* 8 COLLIER ON BANKRUPTCY ¶ 1517.01 (16th 2018) ("Following the Barnet ruling, bankruptcy courts within the Second Circuit have found that it takes very little to satisfy the section 109(a) requirement."). "It would be contrary to the plain meaning of the statute to impose a quantum of property or a requirement that such property be 'substantial.'" ***In re*** B.C.I. Finances Pty Ltd., 583 B.R. at 294 (internal citation omitted). "Several courts have held that nominal amounts of property in the United States enable a foreign corporation to qualify as a debtor under Section 109(a) of the Bankruptcy Code." **[*527]** ***In re*** Yukos Oil Co., 321 B.R. 396, 407 (Bankr. S.D. Tex. 2005) (collecting cases).

As this Court explained in ***In re*** U.S. Steel Canada Inc., 571 B.R. 600 (Bankr. S.D.N.Y. 2017):

> Some courts, including this one, have held that an undrawn retainer in a United States bank account qualifies as property in satisfaction of section 109(a). *See, e.g.*, ***In re*** Octaviar Admin. Pty Ltd., 511 B.R. 361, 372-73 (Bankr. S.D.N.Y. 2014) ("There is a line of authority that supports the fact that prepetition deposits or retainers can supply 'property' sufficient to make a foreign debtor eligible to file in the United States.") (citing ***In re*** Cenargo Int'l PLC, 294 B.R. 571, 603 (Bankr. S.D.N.Y. 2003)); *see also* ***In re*** Berau Capital Resources Pte Ltd., 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015) ("The Court is satisfied that the retainer provides a sufficient basis for eligibility in this case."); ***In re*** Global Ocean Carriers Ltd., 251 B.R. 31, 39 (Bankr. D. Del. 2000) (holding **[**21]** that a $400,000 retainer paid on behalf of the debtors to bankruptcy counsel in that case qualifies as sufficient property in the United States under section 109(a)).
>
> Id. at 609-11; *see also* ***In re*** Cell C Proprietary Ltd., 571 B.R. 542, 551 (Bankr. S.D.N.Y. 2017) (collecting cases holding that a retainer in the United States bank account constitutes property in the United States); ***In re*** Suntech Power Holdings Co., 520 B.R. 399, 412-13 (Bankr. S.D.N.Y. 2014) (concluding that establishment of a bank account in New York prior to commencement of the Chapter 15 proceeding was sufficient to satisfy section 109(a)); ***In re*** B.C.I. Finances Pty Ltd., 583 B.R. at 293-96 (finding that retainers constitute property for purposes of section 109 eligibility and support debtor status in the Chapter 15 context); ***In re*** Agro Santino, OOD, 653 B.R. 79, 88 (Bankr. S.D.N.Y. 2023) ("It is well settled that a retainer account is 'property' for purposes of section 109(a)."); ***In re*** Poymanov, 571 B.R. 24, 30 (Bankr. S.D.N.Y. 2017) ("A debtor's funds held in a retainer account in the possession of counsel to a foreign representative constitute property of the debtor in the United States and satisfy the eligibility

requirements of section 109(a)."). While courts often identify multiple U.S.-based pieces of property when determining whether a foreign debtor satisfies the section 109(a) requirements, this Court has, on at least two occasions, held that a retainer *alone* is sufficient. *See* ***In re*** *B.C.I. Finances Pty Ltd., No. 17-11266 (PB), 2025 Bankr. LEXIS 1635, 2025 WL 1874418, at *3-4 (Bankr. S.D.N.Y. July 8, 2025)* (holding that "a Chapter 15 debtor's creation of a retainer in the U.S. to pay the fees of its Chapter 15 counsel was sufficient **[**22]** to satisfy section 109(a)" and noting that courts have "uniformly held" that the "text of section 109(a) is unambiguous" and "merely requires that the debtor have property—some property, no matter how small and no matter when or why acquired—in the U.S. at the time it files its petition"); ***In re*** *Poymanov, 571 B.R. at 30-31* (holding that funds held in a retainer in the U.S. are sufficient to satisfy the section 109(a) requirement; discussing whether claims asserted in the U.S. also constitute property of the debtor, but noting that it was unnecessary to determine whether such claims satisfied the property requirement in section 109(a) because "the Retainer Account satisfies the eligibility requirements of section 109(a), [so] the Court need not consider whether the SDNY Claims are an additional basis for satisfying the section 109(a) eligibility requirements").

Causes of action held by a foreign debtor, though intangible, can also constitute "property" under section 109(a), depending **[*528]** on (among other things) the law governing the cause of action, questions of administrative ease and equity, and the location of the parties involved. *See* ***In re*** *Octaviar Admin. Pty Ltd, 511 B.R. 361, 370-72 (Bankr. S.D.N.Y. 2014)*.

B. Appropriate Venue for Chapter 15

28 U.S.C.A. § 1410 governs venue for cases under Chapter 15, and provides that Chapter 15 proceedings may be "commenced in the district court of the United States **[**23]** for the district--(1) in which the debtor has its principal place of business or principal assets in the United States; (2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or (3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative." Section 1410 establishes a "hierarchy of choices." 1 ALAN N. RESNICK & HENRY J. *SOMMER, COLLIER ON BANKRUPTCY ¶ 4.04[1]* (16th ed. 2014) ("Collier") (quoting H.R. REP. NO. 109-31, at 119 (2005)). "If the debtor maintains its principal place of business or principal assets in the United States in a particular district, venue must be placed in that district; if not, we turn to subparagraph two. If there is no litigation pending against the debtor in a district, subparagraph three then applies." ***In re*** *Suntech Power Holdings Co., Ltd., 520 B.R. 399, 414 (Bankr. S.D.N.Y. 2014)*.

C. Availability of Interim Relief under *Section 1519*

Section 1519 of the Bankruptcy Code permits the Court to grant certain forms of provisional relief "where relief is urgently needed to protect the assets of the debtor or the interests of the creditors." *11 U.S.C. § 1519(a)*. Specifically, section 1519 provides, **[**24]** among other things, that the court may grant "any relief referred to in paragraph (3), (4) or (7) of section 1521(a)." *11 U.S.C. § 1519(a)(3)*. In relevant part, paragraphs (4) of section 1521(a) provides that upon recognition of a foreign proceeding, whether main or nonmain,

a court may grant any appropriate relief at the request of the foreign representative "providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities." *11 U.S.C. §§ 1521(a)(4)*.

In deciding whether to grant provisional relief in a Chapter 15 case under *section 1519(a) of the Bankruptcy Code*, a court will apply the "standards, procedure, and limitations" applicable for the entry of a preliminary injunction. *11 U.S.C. § 1519(e)*; *see also* ***In re*** *Beechwood Re, No. 19-11560 (MG), 2019 Bankr. LEXIS 2077, 2019 WL 3025283, at *2 (Bankr. S.D.N.Y. July 10, 2019)* ("[T]he Court applies the standards for issuance of a preliminary injunction to determine whether the provisional relief should be granted."). Therefore, in the context of a Chapter 15 proceeding, provisional relief is warranted when: (1) there is a likelihood of success on the merits (i.e., obtaining recognition of the foreign proceeding); (2) there is risk of "imminent irreparable harm" in the absence of relief; (3) the balance of the harms tips the movant's favor; and (4) the public interest weighs in favor of an injunction. ***In re*** *Andrade Gutierrez Engenharia S.A., 645 B.R. 175, 181 (Bankr. S.D.N.Y. 2022)* (quoting *Lyondell Chem. Co. v. Centerpoint Energy Gas Servs. (**In re** Lyondell Chem. Co.), 402 B.R. 571, 588-89 (Bankr. S.D.N.Y. 2009)*). **[**25]** A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary **[*529]** injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009)* (quotation omitted). To satisfy this element, the plaintiff must demonstrate that, absent the injunction, it "will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Id.*

In addition, *section 1522 of the Bankruptcy Code* "states that relief can be granted, modified or terminated under *section 1519*, as the case may be, only if the interests of creditors and other interested parties are sufficiently protected." 1 *COLLIER ON BANKRUPTCY ¶ 13.06* (16th ed. 2022). "A court may (but is not required to) condition relief on the posting of some form of security or a bond." *Id.*

D. *Section 1517(a)*: Recognition of Foreign Proceeding

Section 1517(a) of the Bankruptcy Code establishes three requirements for the recognition of a foreign proceeding under Chapter 15. In order to recognize the foreign proceeding, a court must conclude that:

> (1) The foreign proceeding constitutes a "foreign main proceeding" or a "foreign nonmain proceeding" as defined under *section 1502*;
>
> (2) The foreign representative applying for recognition is a person or body; and
>
> (3) The petition meets the requirements of *section 1515*.

11 U.S.C. § 1517(a).

Recognition **[**26]** of the foreign proceeding is statutorily mandated if the three requirements of *section 1517(a)* are met, and no exception is applicable. *See* ***In re*** *Millard, 501 B.R. 644, 651 (Bankr. S.D.N.Y. 2013)*.

1. *Section 1517(b)(1)*: Recognition of Foreign Main Proceeding

Section 1517(a) of the Bankruptcy Code distinguishes between "foreign main" and "foreign nonmain" proceedings. *Section 1517(b)* establishes conditions for recognition

of each.

In relevant part, section 1517(b)(1) states that a foreign proceeding shall be recognized "as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). Section 1502(4) uses the same language to define "foreign main proceeding." 11 U.S.C. § 1502(4).

a. "Foreign Proceeding"

Section 101(23) defines a "foreign proceeding" as:

> [A] collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). Based on this definition, courts have held that a "foreign proceeding" requires:

> (i) [the existence of] a proceeding;
>
> (ii) that is either judicial or administrative;
>
> (iii) that is collective in nature;
>
> (iv) that is in a foreign country;
>
> (v) that is authorized or conducted **[**27]** under a law related to insolvency or the adjustment of debts;
>
> (vi) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and
>
> (vii) which proceeding is for the purpose of reorganization or liquidation.

[*530] *See* Armada (Singapore) Pte Ltd. v. Shah (***In re*** Ashapura Minechem Ltd.), 480 B.R. 129, 136 (S.D.N.Y. 2012) (citing ***In re*** Betcorp Ltd., 400 B.R. 266, 277 (Bankr. D. Nev. 2009)); ***In re*** *ENNIA Caribe Holding N.V., 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018)*; ***In re*** Agro Santino, OOD, 653 B.R. 79 (Bankr. S.D.N.Y. 2023).

b. "Center of Main Interests"

The Bankruptcy Code does not define the term "center of main interests" (COMI). However, section 1516(c) provides that, in the absence of an objection or evidence to the contrary, a debtor's registered office or habitual residence "is presumed to be the center of the debtor's main interests." 11 U.S.C. § 1516(c); *see also* ***In re*** *Olinda Star I, 614 B.R. 28, 41 (Bankr. S.D.N.Y. 2020)*; ***In re*** Ocean Rig UDW Inc., 570 B.R. 687, 705 (Bankr. S.D.N.Y. 2017); ***In re*** *ABC Learning Centres Ltd., 445 B.R. 318, 333 (Bankr. D. Del. 2010)*, *aff'd*, 728 F.3d 301 (3d Cir. 2013) (internal citations omitted). The relevant temporal anchor for the determination of the location of the debtor's COMI is the date on which the Chapter 15 petition is filed. S*ee* Morning Mist Holdings Ltd. v. Krys (***In re*** Fairfield Sentry Ltd.), 714 F.3d 127, 137 (2d Cir. 2013) (hereinafter "*Fairfield Sentry*").

In assessing whether a movant challenging the registered office presumption has overcome that presumption, courts in this District have applied a list of non-exclusive factors, including: (i) the location of the debtor's headquarters; (ii) the location of those who actually manage the debtor; (iii) the location of the debtor's primary assets; (iv) the location of the majority of the debtor's **[**28]** creditors, or a majority of the creditors who would be affected by the case; and (v) the jurisdiction whose law would apply to most disputes. Fairfield Sentry, 714 F.3d at 137 (citing ***In re*** SPhinX, Ltd., 351 B.R. 103, 117 (Bankr.

S.D.N.Y. 2006)). While these factors offer a "helpful guide" in determining a debtor's COMI, they are not exclusive, consideration of these specific factors is "neither required nor dispositive," and courts are cautioned against their "mechanical application." *Id.*

Additionally, in determining a debtor's COMI, the Second Circuit and this Court have examined the expectations of creditors and other interested parties, as a company's COMI must be "ascertainable by third parties." *See* Fairfield Sentry, 714 F.3d at 136-38; ***In re*** Millennium Global Emerging Credit Master Fund Ltd., 474 B.R. 88, 93 (S.D.N.Y. 2012). As the Second Circuit has explained, by examining factors "in the public domain," courts are able to evaluate whether a debtor's COMI is in fact "regular and ascertainable [and] not easily subject to tactical removal." *See* Fairfield Sentry, 714 F.3d at 136-37. The expectations of creditors can be assessed through examination of the public documents and information available to guide creditor understanding of the nature and risks of their investments." ***In re*** Oi Brasil Holdings Cooperatief U.A., 578 B.R. 169, 228 (Bankr. S.D.N.Y. 2017). In practice, courts evaluate creditor expectations by reviewing has disclosures in offering memoranda, indentures, and similar documentation. *See* id. at 228-32 (analyzing **[**29]** noteholder expectations, as set forth in offering memorandum, as part of COMI inquiry).

As discussed, the determination of a debtor's COMI should be based on facts available at or around the time the Chapter 15 petition is filed. Fairfield Sentry, 714 F.3d at 137. The Second Circuit in Fairfield Sentry clarified that "the factors that a court may consider in this analysis are not limited and may include the debtor's liquidation activities." Id. at 138; see **[*531]** also ***In re*** Modern Land (China) Co., Ltd., 641 B.R. 768, 783 (Bankr. S.D.N.Y. 2022) (finding that a Cayman Islands court's supervision of a debtor's scheme of arrangement established the Cayman Islands as the debtor's COMI, despite the debtor's real estate investments in China and the United States, when creditor expectations were considered). Pre-filing restructuring efforts may shift a debtor's COMI, particularly where the debtor is an entity with such limited operations that restructuring activity constitutes its "primary business activity" prior to the filing of the Chapter 15 petition. Modern Land, 641 B.R. at 789-90.

Material pre-filing restructuring efforts may include the negotiation and/or execution of a restructuring framework or support agreement, organization of creditor meetings, or facilitation of related operational or liquidation activities or administrative functions. **[**30]** *See, e.g.,* Oi Brasil, 578 B.R. at 222 (citing ***In re*** Creative Fin., 543 B.R. 498, 517 (Bankr. S.D.N.Y. 2016)); Modern Land, 641 B.R. at 778-81, 789-90. However, courts may undertake a "holistic analysis" to consider whether a debtor has manipulated COMI in bad faith prior to the filing of a Chapter 15 petition in the debtor's preferred locale. Ocean Rig, 570 B.R. at 704. Potential indicators of "opportunistic" COMI-shifting may include "insider exploitation, untoward manipulation, [and] overt thwarting of third party expectations." Fairfield Sentry, 440 B.R at 66.

2. Section 1517(b)(2): Recognition of Foreign Non-Main Proceeding

The Bankruptcy Code provides that a foreign proceeding shall be recognized as a "foreign nonmain proceeding" if the debtor has an "establishment" in the country in which the foreign proceeding is pending. 11 U.S.C. §§ 1502(5). 1517(b)(2). An "establishment" is "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). Courts have held that the location should:

> constitute a 'seat for local business activity' for the debtor. The terms 'operations' and 'economic activity' require a showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just the maintenance of property.

Creative Fin., 543 B.R. at 520.

3. *Section 1517(a)(2)*: Recognition of Foreign Representative

The term "foreign representative" is defined in *section 101(24) of the Bankruptcy Code* as follows:

> [A] person or body, including a person **[**31]** or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

4. *Section 1517(a)(3)*: *Section 1515* and *Rule 1007* Requirements

Section 1515 separately imposes the following procedural requirements:

> (a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.
>
> (b) A petition for recognition shall be accompanied by—
>
> > (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
> >
> > (2) a certificate from the foreign court affirming the existence of such foreign **[*532]** proceeding and of the appointment of the foreign representative; or
> >
> > (3) in the absence of evidence referred to in *paragraphs (1)* and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.
>
> (c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.
>
> (d) The documents referred **[**32]** to in *paragraphs (1)* and *(2) of subsection (b)* shall be translated into English. The court may require a translation into English of additional documents.

11 U.S.C. § 1515. Additionally, *Bankruptcy Rule 1007* imposes additional procedural requirements, including the filing of a corporate disclosure statement. *Fed. R. Bankr. P. 1007*.

III. DISCUSSION

For the following reasons, the Foreign Representative has met its burden for provisional relief under *Section 1519* of the Code.

A. Eligibility Under *Section 109(a) of the Code*

The CEO of the Foreign Representative has testified that each of the Debtors has a retainer with their New York-based law firm. This is sufficient for the Debtors to meet the definition of "debtor" under *section 109(a)* of the Code. *Section 109(a)* of the Code imposes no

requirements on the amount or kind of property a debtor must hold in the U.S., and years' worth of caselaw in and outside of this Circuit shows that retainers qualify as "property" under section 109(a). *See supra*; *see also* ***In re*** *B.C.I. Finances Pty Ltd., 2025 Bankr. LEXIS 1635, 2025 WL 1874418, at *1-3* (holding that a retainer alone suffices to meet section 109(a)).

In addition, ***Iovate*** USA has a separate New York-based bank account. This also satisfies the "property in the United States" eligibility requirement, but just for Iovante USA. *See* ***In re*** *Berau Cap. Res. Pte Ltd, 540 B.R. at 82*.

The Debtors *may* have other intangible property in the U.S. in the form of claims, as Parris testified that the Debtors are plaintiffs **[**33]** in some proceedings in the U.S. and in Canada. However, the Court does not at present have sufficient information about these lawsuits (starting with whether the Debtors are even bringing any in the U.S.) to determine whether they hold such intangible property in the U.S. Since the Debtors have provided no evidence to support a finding that they have any other property in the U.S. (*e.g.*, their Credit Agreement is governed by Canadian law), the Court relies solely on the retainers to find that the Debtors qualify under section 109(a).

As the only known American property of any of the debtors that is located in New York, this district is the right venue for the Chapter 15 proceedings.

B. The Canadian Proceeding is Likely a "Foreign Main Proceeding" for Each of the Debtors

1. Canadian Proceeding is Likely a "Foreign Proceeding"

The Debtors' Canadian law declarant, Harvey Chaiton, explained that the Canadian proceeding is a judicial proceeding overseen by a foreign (Canadian) court, authorized under various relevant Canadian insolvency statutes, including the Bankruptcy and Insolvency Act, which is collective in nature, and subjects the Debtors' assets and affairs to the supervision of the foreign court. **[**34]** (*See generally* Chaiton **[*533]** Decl.) The Canadian proceeding almost certainly constitutes a "foreign proceeding" as a threshold matter.

2. Each Debtor's COMI as of the Petition Date is Likely Canada

This Court has recently faced the question of whether to grant preliminary relief to a set of foreign debtors which included multiple American companies. *See* ***In re*** *Giftcraft Ltd., No. 25-11030 (MG), 2025 Bankr. LEXIS 1350, 2025 WL 1583480, at *9-10 (Bankr. S.D.N.Y. June 4, 2025)*. In *Giftcraft*, this Court granted such relief upon finding that the American entities' COMIs were *likely* in Canada (the jurisdiction of the foreign proceeding) and that the foreign representative would be able to overcome the registered office presumption. Relevant facts which helped the foreign representative in that case overcome the presumption included, but were not limited to: where the companies maintained office space, where they stored books and records and inventory, where managerial activities took place, and the fact that a Canadian receiver had been put in charge of the assets and operation of the entire foreign debtor group. *Id.*

As in *Giftcraft*, the Court finds that the Foreign Representative made a sufficient showing of likelihood of success on the merits, *i.e.*, has shown that it is likely that the Debtors' COMI is in Canada.

[35]** The analysis is straightforward for ***Iovate*** International and Northern Innovations. ***Iovate*** International and Northern Innovations

have their registered offices in Ontario, Canada, so the presumption cuts in favor of finding their COMIs to be in Canada. They also have no operations directly in the U.S. It is clear that the Canadian proceeding is the foreign main proceeding for these two entities.

The Foreign Representative has also shown by a preponderance of the evidence that the Canadian proceeding is the foreign main proceeding for ***Iovate*** USA as well, despite it being incorporated in Delaware and having its registered office there. ***Iovate*** USA, while it employs 11 people in the U.S. and its principal asset is accounts receivable from U.S.-based customers (which are deposited into New York-based bank accounts), is run out of Ontario, along with the rest of the ***Iovate*** Group. ***Iovate*** USA's three officers/senior managers are either in China or in Canada. And Parris testified that the Debtors' operations are all highly integrated and share management, headquarters, and accounting/finance/HR functions, all of which occur in Canada. The Foreign Representative has therefore established a likelihood **[**36]** of success on the merits.

C. Irreparable Harm Will Result from Denial of Motion

In the cross-border insolvency context, courts have recognized that irreparable harm exists where local actions could hinder the orderly process of a foreign proceeding and the goal of the fair distribution of assets. *See* ***In re*** *Garcia Avila, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003)* ("[A]s a rule, therefore, irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors."); ***In re*** *Berau Capital Res. PTE Ltd.*, No. 15-11804 (MG) (Bankr. S.D.N.Y. Aug. 6, 2015) (ECF Doc. # 20) at 3 (granting provisional relief to prevent potential interference with foreign debtor's "efforts to administer its estate and restructure its operations pursuant to the [f]oreign [p]roceeding" and "undermining the [f]oreign [r]epresentative's efforts to achieve an equitable result for the benefit of all of the [f]oreign [d]ebtor's creditors and interest holders" in the absence of the **[*534]** requested relief); ***In re*** *Banco Nacional de Obras y Servicios Publicos, S.N.C., 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988)* (finding injunctive relief necessary "to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group"); ***In re*** *Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988)* (concluding that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury"). **[**37]**

The Foreign Representative has provided uncontested testimony supporting a finding of likely irreparable harm in the absence of the relief requested. As counsel for the Foreign Representative explained at the hearing for this Motion, the clock was ticking on Orgain's ability to perfect its security interest in the writ of garnishment, which would have further interfered with the Debtors' ability to repay their preexisting obligations. The risk of Orgain perfecting its security interest and potentially seizing or otherwise impairing the Lenders' collateral (and impeding the Debtors' cashflow), and of the Lenders maneuvering around the Canadian Proceeding and Canadian stay in an attempt to recover from the Debtors in the U.S., absent the requested interim relief, was great.

D. Balance of Harms Favors Provisional Relief

The balance of harms favors the Foreign Representative. The Foreign Representative has explained how the interim relief will protect

the Debtors' estates and thereby serve the creditor body. And the creditors can seek to submit a claim in the Canadian proceeding, if they wish.

E. Granting Relief is in the Public Interest

Granting relief is in the public interest and is consistent **[**38]** with the policies underlying the Bankruptcy Code and Chapter 15. It would prevent the erosion of the Debtors' estates via an international workaround to the Canadian stay, and would ensure the equitable treatment of creditors. Moreover, it would minimize interjurisdictional inconsistencies and enable cooperation between this Court and the Canadian court.

F. Sufficient Protection

As required under *section 1522(a) of the Bankruptcy Code*, all parties are "sufficiently protected" such that this Court may grant the Provisional Relief. *11 U.S.C. § 1522(a)*; *see SPhinX, 351 B.R. at 112-13* (holding that *section 1522* provides that the court may grant or modify interim relief under *section 1519* only if the interests of all parties are "sufficiently protected"). Relief under *section 1519 of the Bankruptcy Code* should be denied for a lack of sufficient protection only "if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors." H.R. Rep. No. 109-31, pt.1, at 116 (2005). Here, there is no indication that affected parties will not be able to go to the Canadian court in connection with the Debtors' Canadian insolvency proceeding. All parties potentially impacted by the Provisional Relief will have access to courts in both Canada and the United States, and are therefore sufficiently protected. **[**39]**

G. Security

No security is required here. "[A] temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with *Rule 65(c)*['s requirement to give security]"). *See Fed. R. Bankr. P. 7065*. The Court has "wide discretion to set the amount of a **[*535]** bond [under *Rule 65(c)*], and even to dispense with the bond requirement." *Doctor's Assocs. v. Distajo, 107 F.3d 126, 136 (2d Cir. 1997)*. Accordingly, the Court may, but is not required to, mandate that the Foreign Representative provide security. The Foreign Representative maintains that such security requirements are unnecessary. (Motion ¶ 35.) There is no reason to impose a bond on the Debtors.

IV. CONCLUSION

For the reasons explained above, the Court granted the Foreign Representative's Motion for provisional relief. A separate order granting the relief has already been entered (*see* ECF Doc. # 20).

Dated: September 12, 2025

New York, New York

Martin Glenn

MARTIN GLENN

Chief United States Bankruptcy Judge

End of Document

In re Venus Capital Mgmt. Co.

United States Bankruptcy Court for the District of Rhode Island

March 2, 2026, Decided

Bk. No. 25-10709, Chapter 15, (Jointly Administered), Bk. No. 25-10713, Chapter 15, (Jointly Administered)

Reporter
2026 Bankr. LEXIS 528 *; 2026 LX 193643; 2026 WL 582870

In re: Venus Capital Management Company, et al., Debtors in Foreign ProceedingVenus Global Macro Fund, Ltd., et al. Debtors in a Foreign Proceeding

Counsel: [*1] For Venus Capital Management Company, et al, Debtor (1:25-bk-10709): Frances Kleiner, Akerman LLP, New York, NY; Randall Adam Swick, Akerman LLP, Austin, TX.

For Bavesh Huns Biltoo, Foreign Representative (1:25-bk-10709): Frances Kleiner, Akerman LLP, New York, NY.

For Venus Global Macro Fund, Ltd., et al, Debtor (1:25-bk-10713): Frances Kleiner, Akerman LLP, New York, NY; Randall Adam Swick, Akerman LLP, Austin, TX.

For Russell Crumpler, Foreign Representative (1:25-bk-10713): Frances Kleiner, Akerman LLP, New York, NY.

Judges: John A. Dorsey, Jr., Chief United States Bankruptcy Judge.

Opinion by: John A. Dorsey, Jr.

Opinion

OPINION OF ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDINGS AND ADDITIONAL RELIEF

I. Introduction

In five simultaneously filed Chapter 15 cases, the Court considered whether to grant Petitions seeking recognition of foreign proceedings (the "Petitions") initiated in Mauritius and the British Virgin Islands ("BVI"). In doing so, the Court also considered the applicability of *11 U.S.C. § 109* in Chapter 15 cases.[1]

Three of the Chapter 15 cases involve proceedings based in Mauritius: *Venus Capital Management Company*, Bk. No. 25-10709; *Venus India Structured Finance Master Limited*, Bk. No. 25-10710; *Venus Master* ***[*2]*** *Fund*, Bk. No. 25-10711 (collectively the "Mauritius Debtors"). The other two involve proceedings based in the BVI: *Venus Global Macro Fund, Ltd*, Bk. No. 25-10713; *Venus India Structured Finance (Offshore) Fund Limited*, Bk. No. 25-10714 (collectively the "BVI Debtors").[2]

On October 9, 2025, the Court held a hearing (the "Recognition Hearing") on the Petitions, during which time the Debtors' foreign Representatives and Debtors' Counsel

[1] Unless otherwise indicated, the terms "Bankruptcy Code," "chapter," and "§" refer to *Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.*, as amended by the ***Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub L. No. 109-8, 119 Stat. 37*** ("BAPCPA").

[2] The Mauritius Debtors and the BVI Debtors are collectively referred to as the "Debtors."

appeared.[3] Having concluded that the Foreign Representatives of the Mauritius and BVI Proceedings satisfied all requirements of § 1517 and § 1515, the Court granted the Petitions and the additional relief requested by the Foreign Representatives, pursuant to § 1521.[4]

The following Opinion contains the Court's findings of fact and conclusions of law. Given the interconnected nature of the BVI and Mauritius Proceedings, as well as the parallels in the BVI and Mauritius Foreign Representatives' arguments, the following Opinion provides the reasoning behind the Orders granting all five Petitions.

II. Jurisdiction

The Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under § 157(b)(2)(P).

III. Background

A. History **[*3]** and Corporate Structure of the Debtors

Vikas Mehrotra ("Mehrotra") incorporated Venus Capital Management Company ("VCM") in 2010. *See* Bk. No. 25-10709, Doc. #4, Declaration of Bavesh Huns Biltoo ("Biltoo Decl.") ¶¶ 6, 10. VCM was set up to act as a Collective Investment Scheme ("CIS"). *Id.* ¶ 6. Mehrotra owned 100% of VCM's shares. *Id.* ¶ 10.

As the sole holder of the management shares (voting, non-participating), VCM is the sole voting member of two funds incorporated in the BVI, Venus Global Macro Fund, Ltd. ("BVI Macro Fund") and Venus India Structured Finance (Offshore) Fund Limited ("BVI India Fund"). *Id.* ¶ 11.

The BVI India Fund and BVI Macro Fund "operated as feeder funds in master-feeder-fund structures" with the Venus Master Fund (the "Mauritius Macro Fund") and the Venus India Structured Finance Master Limited ("Mauritius India Fund") acting as master funds. *Id.* The Mauritius Macro Fund served as the master fund for the BVI Macro Fund and the Mauritius India Fund served as the master fund for the BVI India Fund. *Id.*

In turn, the Mauritius Macro Fund and the BVI Macro Fund were formed to make profits through investments in listed securities in India. *Id.* ¶ 14. As an alternative **[*4]** to security investments, the Mauritius India Fund and the BVI India Fund provided a structure to invest in a non-banking financial company in which investors could participate in the market for secured and unsecured lending to Indian companies. *Id.* ¶ 15.

Mehrotra principally operated the investment activities of both the BVI and Mauritius Debtors. *Id.* ¶¶ 20, 22.

B. Appointment of Liquidators and Commencement of Mauritius and BVI Proceedings

Mehrotra unexpectedly passed away in 2023. *Id.* ¶ 21. Mehrotra was so vital to VCM's operations that upon his death VCM's board of directors could no longer effectively manage the company or make strategic decisions on its behalf. *Id.* ¶ 22. After determining that the company could not function, VCM's directors began taking steps to put the appropriate entities into insolvency proceedings. *Id.* ¶ 24.

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[3] The ongoing proceedings in Mauritius related to the Mauritius Debtors shall be referred to as the "Mauritius Proceedings." The ongoing proceedings in the BVI related to the BVI Debtors shall be referred to as the "BVI Proceedings."

[4] The Mauritius Debtors have been administratively joined under the lead case *Venus Capital Management Company, et al*, Bk No. 25-10709. The BVI Debtors have been administratively joined under the lead case *Venus Global Macro Fund, Ltd., et al*, Bk. No. 25-10713.

In November of 2024, VCM's directors formally appointed Huns Biltoo (the "Mauritius Foreign Representative" or the "Mauritius Liquidator") as Administrator of VCM pursuant to Section 215(6)(a) of the Mauritius Insolvency Act. *Id.* ¶ 26. In turn, the Mauritius Liquidator, executed shareholder resolutions to place the BVI Debtors into liquidation under Section 159(2) of the BVI Insolvency Act. *See* Bk. No. 25-10713, Doc. #4, Declaration of Russell **[*5]** Crumpler ("Crumpler Decl.") ¶ 26. From there, the Mauritius Foreign Representative appointed Russell Crumpler and Christopher Farmer (the "BVI Liquidators" or the "BVI Foreign Representatives") as joint liquidators. *Id.*

The Mauritius Liquidator and BVI Liquidators have represented to the Court that they are cooperating with each other to take control of their respective Debtors' investments, cash, and other assets to distribute them to the appropriate creditors and investors.

The Mauritius Liquidator has, *inter alia*: provided notice of his appointment to the Mauritius Revenue Authority, the Director of Insolvency, the office of the registered agent, all known stakeholders (creditors and contributories), professional advisors, the fund administrator and counterparties; advertised his appointment in two daily newspapers; retained counsel in Mauritius and the United States to seek Chapter 15 recognition of the Mauritius Proceedings; and, in the case of VCM, notified creditors of and held the first meeting of creditors. Biltoo Decl. ¶ 30.

The BVI Liquidators have, *inter alia*: provided notice to the BVI Financial Services Commission, the Registrar of Corporate Affairs, the office of the registered **[*6]** agent, all known stakeholders (creditors and contributories), professional advisors, the fund administrator and counterparties of their appointment; advertised their appointment; retained counsel in the BVI and the United States to seek Chapter 15 recognition of the BVI Proceedings; notified creditors of, and held, the first meeting of creditors; and issued a formal report to creditors. Crumpler Decl. ¶ 29.

The Mauritius Liquidator and BVI Liquidators have confirmed that they have control over the Mauritius and BVI Debtors, respectively, and that since their appointments, most of the work performed in relation to the Foreign Proceedings has been done in each Debtor's country of origin. *Id.* ¶¶ 35-36; Biltoo Decl. ¶¶ 35-36.

C. Law Governing the Foreign Proceedings

i. Mauritius Law

Insolvency proceedings in Mauritius are governed by the Mauritius Insolvency Act and complemented by regulations contained in the Companies Act 2001. The Mauritius Insolvency Act was modeled on the equivalent legislation in New Zealand and "basically encompasses (i) bankruptcy for individuals, and (ii) voluntary or court liquidation, voluntary administration, and receivership for companies." *See* Bk. No. 25-10709, **[*7]** Doc. #5, Declaration of Rajeshwar Bucktowonsing ("Bucktowonsing Decl.") ¶ 10.

These proceedings are commenced by the act of appointing an administrator, here Mr. Biltoo. *Id.* ¶ 20. Pursuant to Section 154(1) of the Insolvency Act, any directors will remain in office but are unable to act as officers of the company without prior approval of the administrator. *Id.* ¶ 30(a). Unless otherwise authorized by the court, legal proceedings against the company are stayed. *Id.* ¶ 25.

The court supervising an insolvency in Mauritius has supervisory authority over an administrator's conduct and will issue orders when appropriate (for instance, if the administrator manages the company's assets

or affairs in a way that prejudices creditors, or if the administrator fails to give notice as required by the Mauritius Insolvency Act). *See id.* ¶ 32. Any person may appeal decisions of the liquidator to the court. *Id.* ¶ 33(b). If a liquidator fails to comply with their duties the court has power to relieve them of their duties. *Id.* ¶ 33(g).

As part of their duties, a liquidator will take control of a company's assets, realize them, and distribute them. *Id.* ¶ 35. The funds must be distributed in the order of priority listed in the Fourth Schedule **[*8]** of the Insolvency Act. *Id.* After priority claimholders, general creditors are paid, and any surplus shall be distributed to the company's shareholders. *Id.* ¶¶ 35-36.

Once assets are distributed and statutory requirements are met, the process ends, and the company is dissolved. *Id.* ¶ 34.

ii. BVI Law

The BVI proceedings are governed by the BVI Insolvency Act, Parts VI through XI, and the BVI Insolvency Rules. BVI insolvency proceedings can be commenced by either: (1) a qualifying resolution of the members of a company, or (2) an order of the BVI Court. *See* Bk. No. 25-10713, Doc. #5, Declaration of Daniel Mitchell ("Mitchell Decl.") ¶¶ 21-22. Once the liquidator is appointed, they take custody and control of a company's assets. *Id.* ¶ 25. Though the directors remain in office, they are only able to act as prescribed by the BVI Insolvency Act or as authorized by the liquidator. *Id.*

Even though the BVI Proceedings were not commenced by an order of the Commercial Division of the High Court of Justice, British Virgin Islands (the "BVI Court"), the BVI liquidators act as officers of the BVI Court and are supervised by the BVI Court. *Id.* ¶¶ 19, 28. Creditors and shareholders are treated on a *pari* ***[*9]*** *passu* basis and funds are distributed according to a priority scheme. *Id.* ¶ 31. Liquidators must submit reports and accounts to the BVI Court regarding their conduct in the liquidation and their investigation of the company's financial affairs. *Id.* ¶ 32. The BVI Court must approve the liquidators' renumeration. *Id.* ¶ 33.

D. Initiation of Chapter 15 Cases and the Recognition Hearing on the Petitions

The Debtors have initiated these cases for the primary purpose of staying actions against them and taking control of certain bank accounts located at Citizens Bank in Providence, R.I. (the "Bank Accounts").

At the Recognition Hearing, the Court obtained further information relative to the BVI and Mauritius Proceedings. The Court's primary focus was understanding the intricacies of Mauritius insolvency law, as recognition of foreign proceedings based in Mauritius pursuant to *Chapter 15 of the Bankruptcy Code* has not been previously taken up by a Bankruptcy Court. As such, the requests to recognize the Mauritius Proceedings is a matter of first impression.

Mr. Biltoo represented that the Mauritius Proceedings take place with the supervision of the Mauritius Court. If there are disputes regarding claims, all funds would be held **[*10]** pending the resolution of said disputes. Part of the discovery process is ranking claims, and if any of them need to be adjusted there is a fair process to do so based on the submitted proof of debts. In both Mauritius and BVI Proceedings, there is no claims bar date.

As of the time of the Recognition Hearing, Mr. Biltoo had not yet sold any assets or paid any liabilities. Mr. Biltoo has investigated assets in India and taken control of Mauritius assets. Since the BVI Debtors are shareholders of the Mauritius Debtors, Mr. Biltoo has had open

communication with Mr. Crumpler and Mr. Farmer about the Mauritius process. They have represented that they intend to continue open communication to ensure the lawful distribution of all funds through the processes described above.

Notably, if there are any disputes between representatives of the BVI and Mauritius Proceedings, Mr. Crumpler indicated that the parties could turn to the Basic Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters ("JIN Protocol"). This protocol would enable all courts involved to communicate efficiently and effectively to resolve any disputes.

IV. Venue

Section 1410(1) of Title 28 of the United States Code ("Section 1410(1)") provides that venue **[*11]** in cases ancillary to foreign proceedings is proper in the district court in which the debtor has its principal place of business or principal assets in the United States.

The Debtors claim their principal assets are the Bank Accounts and an ownership interest in a retainer on deposit in an Akerman LLP trust account in Rhode Island. To demonstrate that this is sufficient for venue under Section 1410(1), the Debtors look to courts that have found that deposits in a bank account and an attorney retainer on deposit, either together or on their own, provide sufficient basis for venue. Bk No. 25-10709 (Doc. #3), ¶ 4 (citing In re Inversora Eléctrica de Buenos Aires S.A., 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016)).

In the absence of binding authority, this Court is persuaded by several Second Circuit cases which have found that retainer accounts provide a sufficient basis to fulfill Section 1410(1)'s requirements. *See* In re B.C.I. Finances Pty Ltd., 583 B.R. 288, 294 (Bankr. S.D.N.Y. 2018) (collecting cases concluding that venue for Chapter 15 cases can be found where principal assets consist of retainer accounts alone).

The fact that the retainer accounts can independently satisfy Section 1410(1) is key because the Debtors were unable to clearly demonstrate whether or which Debtors have an interest in the Bank Accounts. Accordingly, venue is proper under Section 1410(1).

V. Eligibility to be a Debtor

Section 109 establishes **[*12]** general eligibility criteria for debtors: "[n]otwithstanding any other provision of this section, 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 [the Bankruptcy Code]." 11 U.S.C. § 109(a). Courts are split on whether this section should apply to Chapter 15 debtors. *See* 8 Collier On Bankruptcy ¶ 1501.03 [3] (Richard Levin & Henry J. Sommer eds., 16th ed.).

There are two approaches: (1) the Second Circuit approach, finding that the plain meaning of § 109 makes clear that it applies to *all* chapters of the Bankruptcy Code; and (2) the "alternative approach," currently followed by Eleventh Circuit, finding that § 109 should not apply to Chapter 15 debtors. *Id.*

The Court of Appeals for the Second Circuit lays out its approach in *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*. *See* 737 F.3d 238 (2nd Cir. 2013). *Barnet* first looks to § 103(a), which "provides that, other than for an exception not relevant here, Chapter 1 'of this title . . . appl[ies] in a case under Chapter 15.'" *Id. at 247*. To counter arguments asserting that Chapter 15 debtors need only meet the definition of "debtor" under § 1502 to prove their eligibility, *Barnet* explains that the purpose of § 109 is not to define but to

qualify **[*13]** what kind of "person" may be a debtor. *See id. at 249*. In turn, the term "debtor" is defined, as opposed to qualified, in *§ 101(13)* and *§ 1502*. *See id.* The *Barnet* court found that this "linguistic parallelism" makes clear that *§ 1502* replaces the definition found in *§ 101(13)* but does not supplant *§ 109*, as *§ 1502* does not provide additional eligibility requirements. *See id.* Simply put, the court found that there is nothing in Chapter 15 overriding *§ 103(a)*'s explicit instruction that Chapter 1 should apply to Chapter 15. *See id.*

Courts following the alternative approach find that the Second Circuit misconstrued Chapter 15's requirements. *See 8 Collier On Bankruptcy ¶ 1501.03 [3]*. The Court in *Al Zawawi* observed that, per *§ 1517(a)*, there are "just three conditions for recognition, none of which involve an assessment of the foreign debtor's contacts with the United States." *In re Al Zawawi, 637 B.R. 663, 667 (Bankr. M.D. Fla. 2022)*, aff'd, *97 F.4th 1244 (11th Cir. 2024)* (citing *11 U.S.C. § 1517(a)*). The *Al Zawawi* court also looked at other sections of the Code indicating the inapplicability of *§ 109*. *See id. at 668*. First, *§ 1528* provides that, after recognition of a foreign main proceeding, a debtor may only commence a case under another Chapter if said debtor has assets in the United States. *Id.* The *Al Zawawi* court questioned why there would be a need to clarify that assets were needed to commence a case under another Chapter if assets **[*14]** were required to commence a Chapter 15 case in the first place. *See id.*

Al Zawawi also pointed out that *Section 1410(2)* and *(3) of Title 28 of the United States Code* would be meaningless if property in the United States was required to commence a Chapter 15 case. *Id. at 669*. Absent holding property in the United States, venue is proper in the district court in which there is pending against the debtor an action or proceeding in a Federal or State court and *Section 1410(3)* requires only that "venue will be consistent with the interests of justice and the convenience of the parties." *Id.* (quoting *28 U.S.C. §1410(2)*).

In turn, COLLIER ON BANKRUPTCY advocates for the alternative approach, explicitly stating that "[w]hile Chapter 1 of the Bankruptcy Code applies in Chapter 15 cases by *§ 103*, the *§ 109(a)* criteria should apply only to cases under Chapters 7, 11, 12 and 13." *8 Collier On Bankruptcy ¶ 1501.03[3]*. Still, courts outside of the Second Circuit are split in adopting the Second Circuit approach. *See Jones v. APR Energy Holdings Ltd. (In re Forge Group Power Pty Ltd.), No. 17-02045, 2018 U.S. Dist. LEXIS 23660, at *32 (N.D. Cal. Feb. 12, 2018)* (deeming COLLIER'S criticism of *Barne* t "unwarranted" and finding *Barnet's* reasoning persuasive).

This Court is persuaded by the reasoning in *Al Zawawi* and COLLIER. Though it might appear that the plain language of *§ 103* requires the application of *§ 109*, such a reading would render *§ 1517*, *§ 1528* and *Section 1410* meaningless. In addition, the Court is persuaded that the alternative **[*15]** approach is more consistent with Congress' intentions.[5] *See In re Al Zawawi, 637 B.R. at 669*. Therefore, this Court finds that Chapter 15 debtors do not have to meet *§ 109*'s eligibility requirements.[6]

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[5] "The relevant House Report plainly states that '[t]he requirements of [*§ 1517*] . . .are all that must be fulfilled to attain recognition.'" *In re Al Zawawi, 637 B.R. at 669* (quoting H.R. Rep. No. 109-31, pt. 1, at 113).

[6] Even if this Court were inclined to adopt the Second Circuit approach, the Debtors would meet the eligibility requirements of *§ 109* through ownership of the retainer accounts. *See In re B.C.I. Finances Pty Ltd., 583 B.R. at 293* ("[I]t is well established that '[a] debtor's funds held in a retainer account in the possession of counsel to a foreign representative constitute property of the debtor in the United States and satisfy the eligibility requirements of *section 109*.") (quoting *In re Poymanov, 571 B.R. 24, 29 (Bankr. S.D.N.Y. 2017)*).

VI. Summary of Recognition Requirements Under § 1517

Section 1517(a) provides that:

> (a) Subject to § 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if--
>
> (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of § 1502;
>
> (2) the foreign representative applying for recognition is a person or body; and
>
> (3) the petition meets the requirements of § 1515.

11 U.S.C. § 1517(a).

The foreign proceeding and the foreign representative must also meet the definitional requirements set out in § 101(23) and § 101(24).[7] *See* 8 COLLIER ON BANKRUPTCY ¶ 1517.01; 11 U.S.C. § 101(23) and § 101(24).

a. Section 1515 Requirements

To initiate the Chapter 15 process a foreign representative files a petition for recognition. 11 U.S.C. § 1515(a). This petition must be accompanied by:

> (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
>
> (2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
>
> (3) in the absence of evidence referred to in paragraphs (1) and (2), any other **[*16]** evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

The Court finds that the certified copy of written resolutions to liquidate the Debtors and appoint Mr. Biltoo, Mr. Crumpler, and Mr. Farmer as liquidators are sufficient to satisfy § 1515(b)(1). *See* Bk. No.25-10709, Doc. #4; Bk. No. 25-10713, Doc. #4.

b. The Foreign Proceedings

i. As Defined Under § 101(23)

The Code defines "foreign proceeding" as "a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation." 11 U.S.C. § 101(23). Courts have broken this definition down into seven elements:

> (i) a proceeding; (ii) that is either judicial or administrative; (iii) that is collective in nature; (iv) that is in a foreign country; (v) that is authorized or conducted under a law related to insolvency or the adjustment of debts; (vi) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and (vii) **[*17]** which proceeding is for the purpose of reorganization or liquidation.

In re ABC Learning Centres Ltd., 728 F.3d 301, 308 (3d Cir. 2013).

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[7] Section 1516(a) provides that "[i]f the decision or certificate referred to in § 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume." 11 U.S.C. § 1516(a).

1. The Mauritius Debtors

As explained above, to date, no proceeding under the Mauritius Insolvency Act has been recognized as a "foreign proceeding" under Chapter 15. In turn, the Court endeavored to determine whether the Mauritius Proceedings fit the Code's definition of "foreign proceeding."

First the Mauritius Debtors must establish that the proceeding is "judicial or administrative" in character. There are many qualifying "administrative" aspects to the Mauritius Proceedings, including the requirements that the administrator provide notice of the proceeding, request proofs of debts, and the submission and categorization of such proofs of debt. *See* In re Betcorp Ltd., 400 B.R. 266, 280 (Bankr. D. Nev. 2009).

A proceeding under the Mauritius Insolvency Act may commence by the act of appointing an administrator, without the need of a court order. Also, the Mauritius court does not supervise the entire liquidation process. However, complete court supervision of a proceeding is not required for it to meet § 101(23)'s requirements. *See* In re Betcorp Ltd., 400 B.R. at 280; Guide to Enactment of the UNCITRAL Model Law on Cross—Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess., U.N. Doc. A/CN.9/442 (1997) (the "UNCITRAL **[*18]** Guide") ¶74. It is sufficient that, under the Mauritius Insolvency Act, there is recourse for claimholders to appeal administrator's decisions to the court, and that the court will issue orders when appropriate. *See* In re Betcorp Ltd., 400 B.R. at 280. The Mauritius Court can also remove an administrator who fails to comply with their duties. Bucktowonsing Decl. ¶33(g). This Court is therefore satisfied that the character of the Mauritius Proceedings are sufficiently "judicial or administrative" in nature pursuant to § 101(23)'s requirements.

To determine whether the proceedings are "collective," courts should look to whether they "consider[] the rights and obligations of all creditors." In re Betcorp Ltd., 400 B.R. at 281. "A collective proceeding 'must be instituted for the benefit of creditors generally rather than for a single creditor or class of creditors.'" *In re PT Bakrie Telecom Tbk, 628 B.R. 859, 873 (Bankr. S.D.N.Y. 2021)* (quoting In re British Am. Ins. Co., 425 B.R. 884, 902 (Bankr. S.D. Fla. 2010)). Courts will decline to find a proceeding collective when it is "more akin to a[n] individual creditor's replevin or repossession action than it is to a reorganization or liquidation by an independent trustee." In re Gold & Honey, Ltd., 410 B.R. 357, 370 (Bankr. E.D.N.Y. 2009).

Importantly, the Mauritius Insolvency Act requires that proofs of debt be submitted and that the assets of the liquidating entity be distributed according to a priority scheme. Bucktowonsing **[*19]** Decl. ¶¶26-27. If creditors have objections, they may appeal to the Mauritius Court. *Id.* ¶33. The Court is therefore satisfied that these proceedings are sufficiently "collective."

The Mauritius Proceedings are in a foreign country, satisfying element (iv). *See* 11 U.S.C. § 101(23); In re ABC Learning Centres Ltd., 728 F.3d at 307-08. Element (v) is also satisfied because the Mauritius Insolvency Act provides a unified structure under which an entity might liquidate their assets in a unified and lawful manner. *See* In re Betcorp Ltd., 400 B.R. at 282.

The Court is also satisfied that the provisions of the Mauritius Insolvency Act allowing for the removal of a liquidator "on good cause shown" and the ability of creditors to object to unfair treatment are enough to meet element (vi). *See* id. at 284; Mauritius Insolvency Act Sections 283, 284, 226, 108(8). The Mauritius Liquidator has also demonstrated that the

purpose of the proceedings is to liquidate the assets of the Mauritius Debtors, satisfying element (vii).[8] *See* id. at 284-85.

ii. COMI Under § 1502(4) and the § 1516(c) Presumption

A "foreign main proceeding" is a foreign proceeding pending "where the debtor has the center of its main interests" ("COMI"). *See* 11 U.S.C. § 1502(4).

Section 1516(c) provides that "[i]n the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed **[*20]** to be the center of the debtor's main interests." 11 U.S.C. § 1516(c). The "[r]egistered office here refers to the place of [the debtor's] incorporation." *See* 8 Collier On Bankruptcy ¶ 1516.03. The Petitions attach written resolutions which indicate that the Mauritius Debtors and BVI Debtors are incorporated under the laws of Mauritius and BVI, respectively. *See* Bk. No. 25-10709, Doc. #4, Ex. C; Bk. No. 25-10713, Doc. #4, Ex. C.

It is worth noting that the Mehrotra Children's Irrevocable Trust and Vikas Mehrotra Family Irrevocable Trust (collectively, the "Trusts") initially filed an objection to the BVI Debtors' Petitions. Bk. No. 25-10713, Doc. #25 (the "Objection"). In the Objection, the Trusts introduced arguments raising questions as to the COMI of the BVI proceedings. The Trusts argued that, up until Mehrotra's death, much of the decision making and business activities of the BVI Debtors had been done in the United States, Mehrotra's country of residence. These arguments, if valid, would call into question the COMI of the Debtors.

At the hearing, the Trusts confirmed that the Objection was resolved and that the Petitions were no longer contested. With the Objection resolved, the Debtors' COMI is no longer in dispute. Thus, the Court **[*21]** finds that the presumption has been met for both Debtors.

Even if the Debtors' COMI was still at issue, this Court agrees with the majority view that "court[s] should examine a debtor's COMI at the time [of] the Chapter 15 petition" filing. *See* Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 133 (2d Cir. 2013). In turn, the record in this matter is well-established that at the time of the filing of the Petitions, almost all activity of the BVI Debtors was occurring in the BVI, and the same for the Mauritius Debtors. Therefore, even if the presumption had not been met, COMI would be proper for both the BVI and Mauritius Debtors.

c. The Foreign Representatives

The Code defines a "foreign representative" as "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). The key inquiry here is whether Mr. Biltoo, Mr. Crumpler, and Mr. Farmer have been appointed in a qualifying foreign proceeding. *See* In re Tradex Swiss AG, 384 B.R. 34, 41 (2008). As established herein, the foreign proceedings meet the requisite requirements, and the appointment of all foreign liquidators is evidenced by the respective liquidation **[*22]** resolutions of the Mauritius and BVI Proceedings. *See* Bk. No.25-10709, Doc. #4, Ex. A; Bk. No. 25-10713, Doc. #4, Ex. A. Therefore, the Court concludes that Mr. Biltoo, Mr. Crumpler, and

[8] It is well established that BVI proceedings have been routinely recognized as "foreign proceedings" under Chapter 15. *See e.g. In re 1MDB Energy Holdings Ltd.*, Bk. No. 24-11469 (Bankr. S.D. Fla. 2024); *In re TZG Capital Ltd.*, Bk. No. 21-11152 (Bankr. S.D.N.Y. 2021); *Rongxingda Development BVI Ltd.*, Bk. No. 22-10175 (Bankr. S.D.N.Y. 2022); *Limora Investments Ltd.*, Bk. No. 19-11678 (Bankr. S.D.N.Y. 2019).

Mr. Farmer are qualifying "foreign representatives."

VII. *Section 1506* Concerns

Section 1506 provides that "[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." *11 U.S.C. § 1506*.

This exception has been narrowly interpreted among countries following the Model Law on Cross-Brder Insolvency, which is adopted in its entirety by *§ 1506*. *See In re Fairfield Sentry Ltd., 714 F.3d at 139*. "The word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States." *Id.* (citing the UNCITRAL Guide) ¶ 89. After a thorough examination of both the Mauritius and BVI Proceedings, the Court does not see any reason why *§ 1506* should preclude recognition.

VIII. Post-Recognition Relief

Once an order recognizing a foreign main proceeding enters, *§ 1520* makes *§ 362*'s automatic stay applicable to the Chapter 15 debtor, effectively staying any actions against property of the debtor within the United States. *See In re Markus, 610 B.R. 64, 75 (Bankr. S.D.N.Y. 2019)*, aff'd, *620 B.R. 31 (S.D.N.Y. 2020)*.

> *Section 1520(a)* also applies **[*23]** *sections 363*, *549* and *552* of the Code to any transfer of a debtor's interest in property within the United States; it allows a foreign representative to operate a debtor's business by exercising the rights and powers of a trustee under *sections 363* and *552*; and it applies *section 552* to property of the debtor that is within the territorial jurisdiction of the United States.

Id. at 75-76. Therefore, upon the entry of the Orders Granting Recognition of Foreign Proceedings, the automatic stay took effect.

The Court has also granted discretionary relief under *§1521(a)* to assist the foreign representatives in their goal of taking control of the Bank Accounts and properly distributing their contents. *See 11 U.S.C. § 1521(a)* (outlining relief that may be granted upon recognition).

IX. Conclusion

For the aforementioned reasons, the Petitions are **GRANTED**.

Date: March 2, 2026

/s/ John A. Dorsey, Jr.

John A. Dorsey, Jr.

Chief Bankruptcy Judge

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Talal Qais Abdulmunem Al Zawawi v. Diss (In re Talal Qais Abdulmunem Al Zawawi)

United States Court of Appeals for the Eleventh Circuit

April 3, 2024, Filed

No. 22-11024

Reporter
97 F.4th 1244 *; 2024 U.S. App. LEXIS 7955 **; 30 Fla. L. Weekly Fed. C 823

In re: TALAL QAIS ABDULMUNEM AL ZAWAWI, Debtor in a Foreign Proceeding.TALAL QAIS ABDULMUNEM AL ZAWAWI, Plaintiff-Appellant, versus COLIN DISS, HANNAH DAVIE, MICHAEL LEEDS, Foreign Representatives, Defendants-Appellees.

Prior History: [1]** Appeal from the United States District Court, for the Middle District of Florida. D.C. Docket No. 6:21-cv-00894-GAP.

Disposition: AFFIRMED.

Counsel: For TALAL QAIS ABDULMUNEM AL ZAWAWI, Plaintiff - Appellant: Nicholas A. Shannin, Shannin Law Firm, PA, ORLANDO, FL; Kenneth D. Herron Jr., Herron Hill Law Group, PLLC, ORLANDO, FL.

For COLIN DISS, Foreign Representative, HANNAH DAVIE, MICHAEL LEEDS, Defendants - Appellees: Leyza Blanco, Sequor Law, PA, MIAMI, FL; Juan Jose Mendoza, Sequor Law, PA, MIAMI, FL.

For AMERICAN COLLEGE OF BANKRUPTCY, DANIEL GLOSBAND, ALLAN L GROPPER, JAY WESTBROOK, PATRICIA REDMOND, Amicus Curiae: Daniel Glosband, Goodwin Procter, LLP, BOSTON, MA; Jacqueline Calderin, Agentis, PLLC, CORAL GABLES, FL.

For SERVICE: Jacqueline Calderin, Agentis, PLLC, CORAL GABLES, FL.

Judges: Before LUCK, LAGOA, and TJOFLAT, Circuit Judges.

Opinion by: LAGOA

Opinion

[*1247] LAGOA, Circuit Judge:

Does *11 U.S.C. § 109(a)* apply to cases brought under *Chapter 15 of the Bankruptcy Code*? A lot turns on this question because Chapter 15 purports to "provide effective mechanisms for dealing with cases of cross-border insolvency," *11 U.S.C. § 1501(a)*, and *§ 109(a)* would significantly restrict the class of persons and entities that could constitute a "debtor" in such cases. The plain text of the Bankruptcy Code provides a clear answer: **[**2]** yes, *§ 109(a)* does apply to Chapter 15 cases. *See* *11 U.S.C. § 103(a)* (stating that Chapter 1 applies to cases under Chapter 15). But when confronted with the question of whether debtor eligibility under Chapter 1 was a prerequisite to ancillary assistance under the statutory predecessor to Chapter 15, this Court said no. *See* *In re Goerg, 844 F.2d 1562 (11th Cir. 1988)*. Because we are bound by that decision and understand its reasoning to be sufficiently applicable to the question presented in this case, we are compelled to respond in the same manner today.

After careful review, and with the benefit of oral argument, we affirm the bankruptcy court's

determination that, under our precedent, § 109(a) does not apply to **[*1248]** Chapter 15 cases and does not establish a prerequisite for the recognition of a foreign proceeding under § 1517. We reason as follows.

I. FACTUAL AND PROCEDURAL HISTORY

The appellant in this case is Talal Qais Abdulmunem Al Zawawi ("Al Zawawi"), a citizen of Oman. Al Zawawi owns shares in QAPA Investing Corporation NV ("QAPA"), an entity incorporated in Curacao that wholly owns several Florida entities. Those Florida entities collectively own around ninety-four million dollars' worth of real estate in or around Winter Park, Florida.

In 2015, Al Zawawi moved **[**3]** to the United Kingdom with his wife, Leila Hammoud, and their children. In 2017, Hammoud petitioned for dissolution of marriage in the U.K. As part of that proceeding, Al Zawawi filed a statement of net worth which indicated that, as of April 30, 2017, he owned some assets in the United States.

In March 2019, Hammoud obtained a divorce decree and a judgment in her favor for £24,075,000 from a U.K. court. On April 2, 2019, the U.K. Court issued a worldwide freezing order against Al Zawawi, enjoining him from disposing of any of his assets until the judgment is paid in full.

About a year later, Hammoud petitioned the U.K. Court to place Al Zawawi in involuntary bankruptcy, alleging that he had failed to make payments on the March 2019 judgment. On June 29, 2020, Al Zawawi was adjudged bankrupt and, soon after, Colin Diss, Hannah Davie, and Michael Leeds (collectively, the "Foreign Representatives") were appointed joint trustees in connection with the case.

On March 24, 2021, the Foreign Representatives began the instant action by filing a Chapter 15 Petition for Recognition of a Foreign Proceeding in the U.S. Bankruptcy Court for the Middle District of Florida.

Chapter 15 of the Bankruptcy Code governs ancillary and other **[**4]** cross-border cases. *See* 11 U.S.C. §§ 1501-32. Its stated purpose is to "incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of": (1) cooperation; (2) "greater legal certainty for trade and investment"; (3) "fair and efficient administration"; (4) "protection and maximization of the value of the debtor's assets"; and (5) "facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment." 11 U.S.C. § 1501(a)(1)-(5).

One of the mechanisms provided by Chapter 15 is recognition of a foreign proceeding. *See* 11 U.S.C. §§ 1515-24. Recognition of a foreign proceeding can subject a debtor's assets located in the United States to the Bankruptcy Code's automatic stay and opens the door for foreign representatives to seek discovery and other relief related to those assets. *See* 11 U.S.C. §§ 1520-21. The requirements for obtaining an order granting recognition are set forth in § 1517.[1]

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[1] Section 1517 states as follows:

> (a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
>
> (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of **[**5]** section 1502;
>
> (2) the foreign representative applying for recognition is a person or body; and
>
> (3) the petition meets the requirements of section 1515.

[*1249] In the memorandum of law accompanying their petition for recognition, the Foreign Representatives argued that all of the requirements **[**6]** of § 1517 were met and therefore an order granting recognition was warranted.

Al Zawawi did not dispute that the requirements of § 1517 had been met but insisted that the petition be denied and the case dismissed because § 109(a) was not satisfied.[2] Section 109(a) governs "[w]ho may be a debtor" under title 11, i.e., the Bankruptcy Code. *See* § 109(a). It states that, "[n]otwithstanding any other provision of this section, 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."[3] *Id.* Al Zawawi maintained that he did not "reside[] or [have] a domicile, a place of business, or property in the United States" as of the petition date and, as a result, could not properly be a debtor under title 11, including Chapter 15. The Foreign Representatives, meanwhile, rejected the premise that § 109(a) applies to Chapter 15 cases but argued that, even if it did, it is satisfied by Al Zawawi's property interests described above.

Following briefing and a hearing on the petition for recognition, the bankruptcy court issued a ruling from the bench in accordance with 11 U.S.C. § 1517(c). *See id.* ("A petition for recognition of a foreign proceeding shall be decided upon **[**7]** at the earliest possible time."). The bankruptcy court granted the petition for recognition and, in doing so, determined that § 109(a) does not apply to Chapter 15 cases. The bankruptcy court further determined that, even if § 109(a) did apply to such cases, the Foreign Representatives sufficiently showed that Al Zawawi had property interests in the United States. The bankruptcy court also provided notice that, given the expedited nature of its ruling, it may issue "a supplemental opinion later."

The bankruptcy court subsequently entered a written order in which it granted the recognition request, recognized the automatic stay, and prohibited the transfer, encumbrance, and disposal of Al Zawawi's assets pursuant to 11 U.S.C. §§ 1520-21. Similar to its bench ruling, the bankruptcy court's written order noted that it "may render a supplemental decision to expand on [its] holding."

Al Zawawi timely appealed the bankruptcy court's order granting recognition to the district court. While that appeal was pending and as contemplated by the initial written order, the bankruptcy court issued a supplemental opinion that expanded upon the ruling offered

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(b) Such foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter may be closed in the manner prescribed under section 350.

[2] Al Zawawi also initially raised an improper venue objection to recognition, citing 28 U.S.C. § 1410. Al Zawawi has since abandoned that argument.

[3] Chapter 1's actual *definition* of "debtor" is provided in 11 U.S.C. § 101(13), which states that "[t]he term 'debtor' means person or municipality concerning which a case under this title has been commenced."

at the hearing and more thoroughly engaged with the arguments presented.

[*1250] Following **[**8]** the bankruptcy court's supplemental opinion, the parties filed their appellate briefs with the district court. The district court ultimately affirmed the bankruptcy court's order granting recognition on the basis that § 109(a) does not apply to Chapter 15 cases. The district court did not address the bankruptcy court's alternative determination that Al Zawawi satisfies § 109(a) due to his property interests in the United States. A corresponding judgment was entered the next day.

Al Zawawi then timely appealed to this Court.

II. STANDARDS OF REVIEW

"In bankruptcy appeals, we act as a second court of review, independently examining the decisions of the [b]ankruptcy [c]ourt and applying the same standards as the [d]istrict [c]ourt." *In re Nica Holdings, Inc., 810 F.3d 781, 785-86 (11th Cir. 2015)*. We therefore consider the bankruptcy court's decision directly, reviewing findings of fact for clear error and legal conclusions *de novo*. *Id. at 786*. For their part, jurisdictional issues are reviewed *de novo*. *In re Donovan, 532 F.3d 1134, 1136 (11th Cir. 2008)*.

III. ANALYSIS

As previewed, the central issue on appeal is whether § 109(a) applies to Chapter 15 cases and imposes a prerequisite for the recognition of a foreign proceeding. Before addressing that issue, however, we first must determine whether we have jurisdiction to hear this appeal. **[**9]** *See Ray v. Edwards, 725 F.2d 655, 658 n.3 (11th Cir. 1984)* ("This court has a duty to review its jurisdiction of an appeal, *sua sponte* at any point in the appellate process.").

A. Jurisdiction

In general, this Court "has jurisdiction over only final judgments and orders," *In re F.D.R. Hickory House, Inc., 60 F.3d 724, 725 (11th Cir. 1995)* (citing *28 U.S.C. § 158(d)*), and a judgment or order is considered "final" only if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment," *Catlin v. United States, 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911 (1945)*. In the bankruptcy context, however, a judgment or order is considered "final" as long as it resolves a "proceeding"—even if it does not resolve the entire case. *See Ritzen Grp., Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 140 S. Ct. 582, 586-87, 205 L. Ed. 2d 419 (2020)*; *In re Charter Co., 778 F.2d 617, 621 (11th Cir. 1985)*. This is because bankruptcy cases often "encompass[] numerous 'individual controversies, . . . which would exist as stand-alone lawsuits but for the bankrupt status of the debtor,'" and which are "linked, one dependent on the outcome of another." *Ritzen, 140 S. Ct. at 586-87* (quoting *Bullard v. Blue Hills Bank, 575 U.S. 496, 501, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (2015)*). Delaying appeal of a decision that resolves a discrete controversy early on in a bankruptcy case therefore carries a risk of substantial inefficiency in the event of a reversal, i.e., the bankruptcy court could have to "un-ravel" several subsequent adjudications "rendered in reliance on [the] earlier decision." *Id. at 587*.

Thus, conducting a finality analysis in the bankruptcy context naturally **[**10]** involves a tricky task of "considerable importance": correctly delineating the dimensions of a bankruptcy "proceeding." *Id.* Fortunately, the Supreme Court recently offered guidance on how to navigate these waters in *Ritzen*, where it held that the adjudication of a stay-relief

motion in the bankruptcy context constitutes its own "proceeding" for finality purposes. *Id. at 587-92*. In reaching that conclusion, the Supreme Court identified two important features of the adjudication of a stay-relief **[*1251]** motion: (1) it involves "a discrete procedural sequence, including notice and a hearing," as set forth by statute, and (2) it "occurs before and apart from the proceedings on the merits of creditors' claims." *Id. at 589*.

In this case, we must determine whether an order granting recognition of a foreign proceeding resolves a discrete bankruptcy "proceeding." Both sides argue that such an order does resolve a "proceeding" and is thus considered "final" under the *Ritzen* framework. We agree.

Like motions to stay relief, petitions for recognition trigger "a discrete procedural sequence" that includes "notice and a hearing." *See 11 U.S.C. § 1517(a)*. And although the adjudication of a petition for recognition does not occur "before" the proceedings on the **[**11]** merits, i.e., the foreign proceeding, it occurs "apart" from those proceedings in the sense that it introduces for the first time and fully occurs in a new legal system, i.e., the federal courts of the United States. Moreover, in cases like this one, the entire Chapter 15 action rests on the initial decision to recognize a foreign proceeding. Thus, in such cases, delaying appeal of orders granting recognition presents precisely the kind of risk to judicial economy highlighted by the Supreme Court. *See Ritzen, 140 S. Ct. at 587* ("Reversal of a decision made early on could require the bankruptcy court to unravel later adjudications rendered in reliance on an earlier decision."). Lastly, the adjudication of a petition for recognition is not a "dispute[] over minor details about how a bankruptcy case will unfold"—it is what determines whether the parties to a foreign proceeding will have access to the judicial resources and power of the United States. *Id. at 590*. That access can have significant implications for enormous amounts of property held in the United States and abroad. For all of these reasons, we are satisfied that an order granting recognition of a foreign proceeding constitutes a final order under the *Ritzen* framework. **[**12]** Thus, the order granting recognition in this case is subject to our jurisdiction under *28 U.S.C. § 158(d)*.

B. The Merits

Having determined that we have jurisdiction over this appeal, we turn now to the central issue presented: whether *§ 109(a)* applies to Chapter 15 cases and imposes a prerequisite for the recognition of a foreign proceeding.

A plain reading of the Bankruptcy Code—specifically *§ 103(a)*—indicates that *§ 109(a) does* apply to Chapter 15 cases. *Section 103* governs the "[a]pplicability of [the] chapters" of title 11, and *subsection (a)* states as follows: "Except as provided in *section 1161* of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, *11*, *12*, or *13* of this title, *and this chapter, sections 307*, *362(o)*, *555 through 557*, *and 559 through 562 apply in a case under chapter 15*." *11 U.S.C. § 103(a)* (emphasis added). "[T]his chapter," as used above in *§ 103(a) of Chapter 1 of title 11*, refers to Chapter 1.[4] And unlike Chapters 3 and 5, for which *§ 103(a)* identifies the particular sections that apply to Chapter 15 cases, Chapter 1 is referenced as a whole, without any indication that certain sections are excluded from application to Chapter 15. Moreover, nothing in *11 U.S.C. § 1161*—the section cited in the subordinating clause at the

[4] The sections of title 11 are numbered in accordance with the chapter in which they are included. For instance, *§ 103* is part of chapter 1, *§ 307* is part of chapter 3, and *§ 555* is part of chapter 5.

start of § 103(a)—limits the application of Chapter 1 to cases under Chapter 15. Accordingly, § 103(a) plainly provides that the entirety **[**13]** of Chapter 1 applies to cases under Chapter 15. It therefore necessarily follows that **[*1252]** § 109(a), as a part of Chapter 1, applies to cases under Chapter 15.

The Second Circuit correctly described this interpretation of § 103(a) as "straightforward." In re Barnet, 737 F.3d 238, 247 (2d Cir. 2013). In fact, the Second Circuit addressed the same question on appeal here and concluded that the plain reading of § 103(a) controls. Id. at 246-51.

But we are differently situated from the Second Circuit in that we are bound by prior precedent that states that Chapter 1's debtor eligibility language does not apply to cases ancillary to a foreign proceeding. *See* In re Goerg, 844 F.2d 1562 (11th Cir. 1988); *see also Generali v. D'Amico, 766 F.2d 485, 489 (11th Cir. 1985)* ("This Court is bound by the case law of the Eleventh Circuit . . . ."). In *Goerg*, this Court dealt with the question of whether the would-be debtor in a case brought under the former § 304[5] —the predecessor to Chapter 15—must fall within Chapter 1's definition of a "debtor," and this Court ultimately said no. 844 F.2d at 1566-68.

In reaching that answer, this Court first identified a point of tension between § 101's definitions of "debtor" and "foreign proceeding." Id. at 1566-67. The term "debtor" was defined, at the time, in the same way that it is defined today: to mean a "person or municipality concerning which a case under this title has been commenced." *Compare* 11 U.S.C. § 101(12) (1982), *with* 11 U.S.C. § 101(13). The term "foreign proceeding," meanwhile, was defined as follows:

> [A] proceeding whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence,

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[5] The former 11 U.S.C. § 304 was titled "[c]ases ancillary to foreign proceedings" and read as follows:

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

> (b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

(1) enjoin **[**14]** the commencement or continuation of—

(A) any action against—

(i) a debtor with respect to property involved in such foreign proceeding; or

(ii) such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

> (2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

> (c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

(1) just treatment of all holders of claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision **[**15]** of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

> principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization.

11 U.S.C. § 101(22) (Supp. IV 1986). Thus, as this Court highlighted, those two definitions presented the following "anomaly":

> **[*1253]** [A]lthough the inclusion of the term "debtor" in the definition of "foreign proceeding" suggests that the subject of the foreign proceeding must qualify as a "debtor" under United States bankruptcy law, the [Bankruptcy] Code expressly **[**16]** provides that the foreign proceeding need not even be a bankruptcy proceeding, either under foreign or United States law.

Goerg, 844 F.2d at 1566-67.

This Court then identified two possible ways to resolve that anomaly:

> First, we could adopt the position . . . that the [Bankruptcy] Code's narrow definition of "debtor" controls, notwithstanding the otherwise expansive definition of "foreign proceeding." Alternatively, we could adopt the view that the term "debtor" as used in the *section 304* context incorporates the definition of "debtor" used by the forum in which the foreign proceeding is pending. Under this alternative view, the bankruptcy court has jurisdiction to entertain the *section 304* petition provided that the debtor qualifies for relief under applicable foreign law, and provided further that the foreign proceeding to which the debtor is subject is "for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization."

Id. at 1567.

In deciding between those two options, this Court relied on the "purpose" of *§ 304* to break the tie. *Id. at 1567-68*. This Court identified *§ 304*'s purpose as being "to 'prevent dismemberment by local creditors' of assets located in this country that are involved **[**17]** in a foreign insolvency proceeding" and, more generally, "to help further the efficiency of foreign insolvency proceedings involving worldwide assets." *Id. at 1568* (quoting H.R. Rep. No. 95-595, at 324 (1977)). In light of that understanding of *§ 304*'s purpose, this Court concluded that "it would make little sense to require that the subject of the foreign proceeding qualify as a 'debtor' under United States bankruptcy law," and that instead it "would make eminent sense for Congress to define expansively the class of foreign insolvency proceedings for which ancillary assistance is available." *Id.*

Accordingly, in the end, this Court chose the second option for resolving the described tension and held that the debtor in an ancillary assistance case under *§ 304* "need only be properly subject" to a "foreign proceeding" as defined in the Bankruptcy Code. *Id. at 1568*. In other words, this Court determined that "'debtor' eligibility under the [Bankruptcy] Code" was not "a prerequisite to *section 304* ancillary assistance." *Id.*

As relevant here, the Bankruptcy Code's current definitions of "debtor" and "foreign proceeding" present an "anomaly" for Chapter 15 that is similar to the one identified and resolved in *Goerg*. This is so because: **[**18]** (1) like the former *§ 304*, Chapter 15 concerns ancillary assistance for "foreign proceedings" and (2) since *Goerg*, the definition of "debtor" has remained the same[6] and the definition of

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[6] *Compare 11 U.S.C. § 101(12) (1982)*, *with 11 U.S.C. § 101(13)*.

"foreign proceeding" has changed only somewhat.[7] Our decision in *Goerg* therefore counsels us to consider the purpose of Chapter 15 in resolving **[*1254]** this definitional anomaly and suggests that, if the purpose of Chapter 15 sufficiently tracks that of the former *§ 304*, we should reach the same outcome.

Given the inescapable indeterminacy of a purposive approach to statutory interpretation,[8] it is impossible to confidently determine the degree to which *Goerg*'s understanding of the purpose of the former *§ 304* can be grafted onto Chapter 15. Every statute is a compromise of multiple interests,[9] and the purpose of any given statute is shaped by both what the statute says and does not say. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Texts* 21 (2012) ("[L]imiting provisions (or the absence of more expansive provisions) are no less a reflection of the genuine 'purpose' of [a] statute than the operative provisions, and it is not the court's function to alter the legislative compromise."). Moreover, the meaning—and therefore the purpose—of any particular statutory language is necessarily shaped by its surrounding statutory context. *See id.* § 24, at 167 ("[T]he whole-text canon . . . calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts. . . . Context is a primary determinant of meaning."); *see also id.* § 39, at 252-53 ("Part of [a] statute's context is the *corpus juris* of which it forms a part . **[**20]** . . ."). These principles play out in immeasurable ways through the many differences between the former *§ 304* and Chapter 15. For instance, the former *§ 304* did not entitle debtors to the automatic stay, as we highlighted in *Goerg*,[10] whereas Chapter 15 establishes that the automatic stay applies upon the recognition of a foreign main proceeding. *See* *11 U.S.C. § 1520(a)(1)*. Further, the former *§ 304* was shaped by a version of Chapter 1 that did not contain an equivalent of *§ 109(a)*'s restriction on who may constitute a debtor or of *§ 103(a)*'s indication that all of Chapter 1 applies to cases ancillary to a foreign proceeding, whereas Chapter 15 is shaped by a version of Chapter 1 that

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[7] At the time *Goerg* was decided, Chapter 1 defined "foreign proceeding" to mean:

[a] proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization.

11 U.S.C. § 101(22) (Supp. IV 1986). Today, Chapter 1 defines "foreign proceeding" to mean:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation. **[**19]**

11 U.S.C. § 101(23). Thus, both definitions of "foreign proceeding" include the term "debtor" but are not strictly limited to bankruptcy proceedings.

[8] *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 18-19 (2012) ("The most destructive (and most alluring) feature of purposivism is its manipulability. Any provision of law . . . can be said to have a number of purposes, which can be placed on a ladder of abstraction. . . . The purposivist, who derives the meaning of text from purpose and not purpose from the meaning of text, is free to climb up this ladder of purposes and to 'fill in' or change the text according to the level of generality he has chosen.").

[9] *See* *Arangure v. Whitaker, 911 F.3d 333, 345 (6th Cir. 2018)* ("[S]tatutes are motivated by *many* competing—and often contradictory—purposes. Congress addresses these purposes by negotiating, crafting, and enacting statutory text. It is that text that controls, not a court's after-the-fact reevaluation of the purposes behind it.").

[10] *See* *Goerg, 844 F.2d at 1568* ("That the *section 304* debtor is denied [the benefit of the automatic stay] strongly suggests that Congress did not intend that 'debtor' eligibility under the [Bankruptcy] Code be a prerequisite to *section 304* ancillary assistance.").

obviously does contain those sections.[11] *See id.* §§ 103(a), 109(a).

[*1255] Despite these differences, however, we believe that the former § 304 and Chapter 15 are sufficiently similar in terms of their purposes such that our decision in *Goerg* controls our analysis in this case. One of the main aims of Chapter 15, according to the Chapter's own "purpose" clause, is to "provide effective mechanisms for dealing with cases of cross-border insolvency." 11 U.S.C. § 1501(a). In *Goerg*, this Court interpreted the former § 304 as having the **[**21]** same purpose. 844 F.2d at 1568. And, based on that purpose, this Court interpreted the definition of "foreign proceeding" and determined that a debtor in a case ancillary to a foreign proceeding "need only be properly subject, under applicable foreign law," to a "foreign proceeding" as defined in the Bankruptcy Code. *Id.* Given the similarities of the definitions of "foreign proceedings" in both Chapter 15 and the former § 304—e.g., both definitions require a "debtor"—and wary of slicing our binding precedent too thin, we follow the logic of *Goerg* and hold that, based on the definition of "foreign proceeding" in § 101(12), as informed by the purpose of Chapter 15, debtor eligibility under Chapter 1 is not a prerequisite for the recognition of a foreign proceeding under Chapter 15. With § 109(a) therefore out of the picture, no dispute remains. Al Zawawi is properly subject to a "foreign proceeding," and the requirements for recognition listed in § 1517 are met.

[11] Another difference between the former § 304 and Chapter 15 is that Chapter 15 provides its own definition of the term "debtor"—which is nearly identical to the definition used in *Goerg*—whereas § 304 did not. *See* 11 U.S.C. § 1502(1) (defining "debtor," for purposes of Chapter 15, to mean "an entity that is the subject of a foreign proceeding"). Unlike the other differences highlighted herein, this difference seems to support applying *Goerg*'s reasoning to Chapter 15. *But see* Barnet, 737 F.3d at 249 (reasoning that § 1502(1) supplants § 101(13) but not § 109(a)).

IV. CONCLUSION

Accordingly, we affirm the bankruptcy court's order granting recognition.

AFFIRMED.

Concur by: LAGOA

Concur

LAGOA, Circuit Judge, Circuit Judge, Specially Concurring:

For the reasons discussed in the majority opinion, I agree that *Goerg* compels the result reached by the majority **[**22]** opinion. But if we were writing on a clean slate, I would reverse the bankruptcy court's determination that 11 U.S.C. § 109(a) does not apply to Chapter 15 cases in accordance with the plain text of 11 U.S.C. § 103(a). *See* Maj. Op. at 12-13. I write separately to address the Foreign Representatives' four main arguments supporting the application of *Goerg* and why I do not believe they are supported by the text of the Bankruptcy Code.

The Foreign Representatives' first argument for why § 109(a) does not impose a prerequisite for recognition is rooted in the language of 11 U.S.C. § 1517(a). Section 1517(a) lists requirements for recognition, including the implied requirement that there be proper notice and a hearing, and states that, if those requirements are met, an order granting recognition "*shall* be entered." (Emphasis added). The Foreign Representatives contend that the use of "shall" indicates that § 1517(a) sets forth an exhaustive list of requirements for recognition and, so the argument goes, the absence of any reference in § 1517(a) to § 109(a) indicates that satisfying § 109(a) is not a prerequisite for recognition.

The problem with this argument is it overlooks that debtor eligibility is baked into the requirements of § 1517(a). The requirements of § 1517(a) expressly contemplate and impliedly depend on **[**23]** the existence of some related "foreign proceeding," *see* 11 U.S.C. § 1517(a)(1)-(3), and the **[*1256]** Bankruptcy Code's definition of "foreign proceeding" similarly expressly contemplates and impliedly depends on the existence of some related "debtor," *see id.* § 101(23). That is where § 109(a) comes into play: it describes "[w]ho may be a debtor." Thus, when read plainly and together with Chapter 1, the requirements of § 1517(a) themselves require satisfaction of § 109(a), even though § 1517(a) alone does not spell that out.

The Foreign Representatives' second argument purports to highlight an irreconcilable conflict between § 109(a) and 11 U.S.C. § 1502. Section 1502 defines a list of terms "for purposes of [Chapter 15]," and subsection (1) defines the term "debtor" to mean "an entity that is the subject of a foreign proceeding." 11 U.S.C. § 1502(1). The Foreign Representatives contend that § 1502(1)'s use of the broad term "entity" conflicts with § 109(a), which limits debtors under title 11 to "person[s] that reside[] or [have] a domicile, a place of business, or property in the United States" and "municipalit[ies]." *See id.* § 101(15) (defining "entity" to include "person[s], estate[s], trust[s], governmental unit[s], and United States trustee[s]"). Specifically, the Foreign Representatives highlight that § 1502(1) seemingly allows for estates, trusts, and certain **[**24]** government units to be debtors whereas § 109(a) appears to categorically exclude them from being such. Even so, the supposed debtor in this case is a person, not an estate, trust, or government unit. And, with respect to persons, § 1502(1) neither contains its own, contrary residency/property requirement, nor clearly spurns the possibility of any such requirement. Thus, as far as this case is concerned, § 1502(1) and § 109(a) can easily be read in harmony: § 1502(1) recognizes that persons can be debtors in Chapter 15 cases, and § 109(a) imposes a residency/property requirement that must be satisfied for a person to be qualify as a debtor. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Texts* § 27, at 180 (2012) ("The provisions of a text should be interpreted in a way that renders them compatible, not contradictory.").

The Foreign Representatives' third argument is that applying § 109(a) to cases under Chapter 15 would render part of 11 U.S.C. § 1528 superfluous. Section 1528 states, in pertinent part, that "[a]fter recognition of a foreign main proceeding, a case under another chapter of this title may be commenced *only if the debtor has assets in the United States*." (Emphasis added). The Foreign Representatives contend that § 1528's asset requirement **[**25]** has no effect if § 109(a) already independently requires that the debtor be either (1) a person who "resides or has a domicile, a place of business, or property in the United States" or (2) a municipality. *See* 11 U.S.C. § 109(a). But this argument rests on the faulty assumption that any debtor who satisfies § 109(a) necessarily "has assets in the United States." As noted during oral argument in this case, it is possible that an individual debtor might reside in the United States without personally owning any assets in the country—for example, he may rely exclusively on assets held abroad or owned by a trust. It likewise is possible that a municipal debtor might not itself own any assets at all. *See* 11 U.S.C. § 101(40). Thus, there are potential cases where a debtor satisfies § 109(a) but not § 1528's asset requirement. In such cases, if a foreign main proceeding has been recognized, § 1528's asset requirement certainly has an effect: it prohibits the commencement of a case under any other Chapter of title 11.

The Foreign Representatives' fourth argument is that applying § 109(a) to cases under Chapter 15 would render parts of 28 U.S.C. § 1410 superfluous. Section 1410 is the venue statute for Chapter 15 cases and provides:

> **[*1257]** A case under chapter 15 of title 11 may be commenced in the district **[**26]** court of the United States for the district—
>
> (1) in which the debtor has its principal place of business or principal assets in the United States;
>
> (2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or
>
> (3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.

The Foreign Representatives argue that, if § 109(a) applies to cases under Chapter 15, every debtor who satisfies § 109(a) necessarily will have a "principal place of business or principal assets in the United States" and therefore satisfy § 1410(1), rendering subsections (2) and (3) meaningless in all cases. Like the Foreign Representatives' § 1528 argument, this argument rests on a faulty assumption. It is entirely possible that a Chapter 15 debtor might satisfy § 109(a) through residence or domicile in the United States but not have a principal place of business or principal property in the United States and therefore not satisfy § 1410(1). In such cases, § 1410(2) and (3) would come into play and determine where venue lies. **[**27]**

In sum, § 103(a) plainly provides that § 109(a) applies to cases under Chapter 15, and I do not find any of the Foreign Representatives' counterarguments based on the text of the Bankruptcy Code to be persuasive. Regardless, this Court's reasoning in *Goerg* suggests that § 109(a) does not apply to cases ancillary to a foreign proceeding, and we are bound by that precedent. "Under the prior precedent rule, we are bound to follow a prior binding precedent 'unless and until it is overruled by this court en banc or by the Supreme Court.'" *See* United States v. Vega-Castillo, 540 F.3d 1235, 1236 (11th Cir. 2008) (quoting United States v. Brown, 342 F.3d 1245, 1246 (11th Cir. 2003)). But if we were not so bound, I would adhere to the plain meaning of § 103(a) and reverse the bankruptcy court's determination that § 109(a) does not apply to Chapter 15 cases.

TJOFLAT, Circuit Judge, Specially Concurring:

I agree with the majority that we are bound by In re Goerg, 844 F.2d 1562 (11th Cir. 1988), where we held that debtor eligibility under the then-applicable bankruptcy code did not limit recognition of foreign proceedings. But I write separately because I respectfully disagree with the majority's interpretation of *In re Goerg* as abstract purposivism. Rather, I believe we are bound by *In re Goerg* because the current definition of a foreign proceeding[1] is substantially the same as the one we soundly interpreted **[**28]** in *In re Goerg*,[2] and

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[1] The current definition of "foreign proceeding" provides, in full:

> The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

[2] The definition of "foreign proceeding" we interpreted in *In re Goerg* provided, in full:

[*1258] whether a court can recognize a foreign proceeding depends on whether the proceeding meets that definition. In any event, the current statute contains additional support for the conclusion that American courts can recognize foreign proceedings regardless of whether the debtor subject to the foreign proceeding is eligible to commence a United States bankruptcy proceeding.

In Part I of this special **[**29]** concurrence, I discuss Title 11 of the United States Code (the "Bankruptcy Code"). I cover the basics of how American bankruptcy proceedings work in Part I.A., and how they contrast with ancillary proceedings in Part I.B. In Part II.A., I discuss our interpretation of "foreign proceeding" in *In re Goerg*. In Part II.B., I explain why the current definition of "foreign proceeding" is materially the same as the one we interpreted in *In re Goerg*, showing why we are bound by that case.

In Part II.C., I discuss how § 1502's definition of "debtor" for the purposes of Chapter 15 is broader than § 109(a)'s limit on "who may be a debtor."[3] Section 1502(1)[4] covers foreign proceedings involving "entit[ies]," while § 109(a) only includes "person[s]." *See 1 Collier on Bankruptcy ¶ 1.01[2][a]* ("A 'person' may be eligible for relief under the Code by virtue of section 109, but one who is an 'entity' and not a 'person'"—such as a probate estate, *In re Goerg, 844 F.2d at 1565-66*—"would not be eligible."). I also emphasize that Chapter 15 incorporates the UNCITRAL[5] *Model Law on Cross-Border Insolvency* (1997) (the "Model Law"). *See* § 1501(a) ("The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency."). And interpreting **[**30]** Chapter 15 in light of its "international origin"—as § 1508[6] requires—confirms that domestic debtor eligibility under § 109(a) is not relevant to recognizing a foreign proceeding under Chapter 15. The Guide Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (the "Enactment Guide") UNCITRAL issued alongside the Model Law says so directly.[7] I then discuss the proceedings in this case, which illustrate why applying debtor eligibility under § 109(a) to recognition **[*1259]** of foreign proceedings encourages fraudulent transfers. That flies in the face of what one would expect given the

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"[F]oreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization.

844 F.2d at 1565 (quoting *11 U.S.C. § 101(22) (1982)*).

[3] *Section 109(a)* says: "Notwithstanding any other provision of this section, 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."

[4] *Section 1502(1)* says: "'debtor' means an entity that is the subject of a foreign proceeding."

[5] United Nations Commission on International Trade Law ("UNCITRAL").

[6] *Section 1508* mandates that, "[i]n 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."

[7] UNCITRAL, *Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency*, ¶ 55 (2013), *available at* https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf. The Guide was updated in 2013 to help clarify the concept of a "center of main interests" in describing a foreign main proceeding. ¶ 18. Paragraph 55 in the 2013 version of the Guide appeared as ¶ 60 in the 1997 version. UNCITRAL Table of Concordance: Guide to Enactment (1997)—Guide to Enactment and Interpretation (2013), *available at* https://uncitral.un.org/sites/un-citral.un.org/files/media-documents/uncitral/en/table_of_concordance-1997-2013-guide-enactment.pdf.

statute's history and purposes.

I.

A.

"The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 367, 127 S. Ct. 1105, 1107, 166 L. Ed. 2d 956 (2007)* (internal quotation marks omitted). In bankruptcy, "through orderly and centralized liquidation or through reorganization or rehabilitation, creditors of equal priority receive ratable and equitable distributions designed to serve 'the prime bankruptcy policy of equality of distribution among creditors of the debtor.'" 1 *Collier on Bankruptcy ¶ 1.01[1]* (16th ed. 2023) (quoting **[**31]** *Union Bank v. Wolas, 502 U.S. 151, 161, 112 S. Ct. 527, 533, 116 L. Ed. 2d 514 (1991)* (quoting H.R. Rep. No. 95-595 at 177-78 (1977)). The goal is to settle the debtor's obligations using the assets he has left before the remaining obligations are discharged. Discharge then enables "the debtor to begin a new financial life." 1 *Collier on Bankruptcy, ¶ 1.02 [1]* (16th ed. 2023).

The bankruptcy process requires collecting the debtor's assets into a bankruptcy "estate" created under *11 U.S.C. § 541* "that comprises all of the debtor's interests, legal and equitable, in property wherever located and by whomever held . . . . at the date of the filing of the petition." 1 *Collier on Bankruptcy ¶ 1.03[1]* (16th ed. 2023). A representative of that estate, the trustee,[8] then lines up the debtor's creditors by priority to decide which can obtain some or all of what the debtor owes them. *See 1 Collier on Bankruptcy ¶ 1.03[2]-[4]* (16th ed. 2023). "In liquidation, this equates to a pro-rata distribution of the debtor's nonexempt assets to creditors; in reorganization, the debtor must pay creditors at least this liquidation amount as a condition of reorganization or rehabilitation." *Id.* at ¶ 1.03[1].

Under the Bankruptcy Code, an individual or business can seek the discharge or restructuring of debts by filing a "voluntary" bankruptcy petition. 1 Collier on Bankruptcy ¶ 1.01[1], ¶ 1.04[1] (16th ed. 2023). The bankruptcy estate is created under **[**32]** *§ 541* upon the filing of a petition. *1 Collier on Bankruptcy ¶ 1.03[1]* (16th ed. 2023). "A voluntary petition automatically constitutes an order for relief," and "[t]here are no specific allegations that are required for the voluntary petition." *Id.* at ¶ 1.04[1] (citing *11 U.S.C. § 301*).[9] But under *§ 301*, the petitioner must "identify[] the chapter of the Code pursuant to which relief is requested," and "[t]he petitioner must qualify as a 'debtor' under the selected chapter." *2 Collier on Bankruptcy ¶ 301.01* (16th ed. 2023).

Section 109 of the Bankruptcy Code lays out who is eligible to "be a debtor" for the purposes of different types of bankruptcy proceedings. *Section 109(a)* creates a minimum **[*1260]** threshold. It provides: "Notwithstanding any other provision of this section, only a person that resides or has a

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[8] Under Chapter 7, 11, 12, and 13 proceedings, a trustee is appointed to represent the estate. In Chapter 9 proceedings, which concern municipalities, the bankruptcy court cannot operate the city's affairs or, except for limited purposes specified in *§ 926(a)*, appoint a trustee. *See 1 Collier on Bankruptcy ¶ 1.07[2]* (16th ed. 2023) (citing *§ 903* and the *Tenth Amendment*). I focus on bankruptcy proceedings for individuals and businesses.

[9] *Section 301* says, in full:

(a) A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter.

(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." § 109(a). That tracks § 101(13)'s definition of debtor, "a person or municipality concerning which a case under this **[**33]** title has been commenced." Then, § 109(b) covers eligibility for Chapter 7 (Liquidation); § 109(c) covers eligibility for Chapter 9 (Adjustment of Debts of a Municipality); § 109(d) covers eligibility for Chapter 11 (Reorganization); § 109(f) covers eligibility for Chapter 12 (Adjustment of Debts of a Family Farmer or Fisherman with Regular Income); and § 109(e) covers eligibility for Chapter 13 (Adjustment of Debts of an Individual with Regular Income). Section 109 does not discuss Chapter 15 or foreign proceedings. *See* 8 Collier on Bankruptcy ¶ 1517.01 (16th ed. 2023) ("Chapter 15 is not listed or mentioned in section 109 because chapter 15 contains a distinct definition of debtor (the subject of the foreign proceeding) who never becomes a debtor under title 11.)").

Creditors can also file an "involuntary" bankruptcy petition under 11 U.S.C. § 303. 1 Collier on Bankruptcy ¶ 1.04[2] (16th ed. 2023). An involuntary proceeding can only travel under Chapter 7 or 11. § 303(a). The creditors'"involuntary petition must allege either that a custodian was appointed to take charge of all or substantially all of the debtor's property within the preceding 120 days or that the debtor is not generally paying its debts as they become due." 1 Collier on Bankruptcy ¶ 1.04[2] (16th ed. 2023). Creditors typically allege the latter. *See id.* Creditors—especially secured creditors concerned **[**34]** about, for example, the dissipation of collateral—can benefit from prompt and efficient distribution of the debtor's assets so that they obtain at least some of what they are owed.

At the beginning of a bankruptcy case,[10] whether "a voluntary or involuntary case, the debtor must file a schedule of assets and liabilities, a schedule of current income and expenses, a schedule of executory contracts, a statement of financial affairs and, if the debtor is an individual, a statement of intention as required" under 11 U.S.C. § 521. 1 Collier on Bankruptcy ¶ 1.04[3] (16th ed. 2023). A debtor who is an individual must also submit "copies of all 'payment advices' received from the debtor's employer within 60 days of filing, a statement of monthly net income, itemized to show how the amount is calculated and a statement disclosing any reasonably anticipated changes in the debtor's monthly net income during the year" following the petition's filing. *Id.* And under 11 U.S.C. § 109(h), "[i]ndividual debtors must also file with the petition a certificate establishing that the debtor has received a credit counseling briefing within the 180 days preceding the commencement of the case. This certificate is necessary for the individual debtor to establish his or her eligibility **[**35]** to file." 1 Collier on Bankruptcy ¶ 1.04[3] (16th ed. 2023).

We need not cover all the aspects of the Bankruptcy Code, but two main aspects of a full-fledged bankruptcy case under Title 11 are worth mentioning here. One is the automatic stay under 11 U.S.C. § 362. The automatic stay is triggered upon the filing of a bankruptcy petition. § 362. "The automatic stay bars anyone from taking action to recover a debt then owing by the debtor **[*1261]** or acting to affect property of the debtor or the estate or in the possession of the estate. It maintains the status quo and prevents dismemberment of the estate by individual action of creditors and others." 1 Collier on Bankruptcy ¶ 1.05[1] (16th

[10] Under Federal Rule of Bankruptcy Procedure 1007, if the petitioner did not file the schedules with the petition, he must file them within 14 days thereafter, except that if the petition is involuntary, the debtor must file the required documents within 14 days of the order for relief. This information is "essential" to providing notice to creditors to submit claims for recovery. *See* 1 Collier on Bankruptcy ¶ 1.04[3] (16th ed. 2023).

ed. 2023). The court can enforce the automatic stay through the contempt power or the imposition of sanctions. *Id.*

The trustee's duties and powers are also important. The trustee in a bankruptcy case "is the representative of the estate," § 323(a), "and as such he owes a fiduciary duty to debtor and creditors alike to act fairly and protect their interests." *In re Whet, 750 F.2d 149, 149 (1st Cir. 1984)*. Section 521(a)(3) requires the debtor to "cooperate with the trustee as necessary for the trustee to perform the trustee's duties," which can "include actions necessary to locating and disposing of property of the estate." *4 Collier on Bankruptcy ¶ 521.01* (16th ed. 2023). The trustee can also **[**36]** avoid various kinds of transactions. *See 1 Collier on Bankruptcy ¶ 1.05[5]* (16th ed. 2023). The avoiding power includes the power to help prevent fraudulent transfers. The Bankruptcy Code contains two provisions to that effect. Under § 544(b),[11] the trustee can assert the rights of an unsecured creditor to avoid a pre-bankruptcy transfer under applicable state law on fraudulent transfers. And under § 548,[12] the trustee can avoid a transfer that fits under the Bankruptcy Code's own definition of fraudulent transfers provided in § 548.

The upshot is that a full bankruptcy proceeding involves, early in the case: (1) an initial filing claiming the debtor is eligible for the requested relief, (2) an automatic stay on proceedings related to the debtor's assets, (3) the creation of an estate covering the debtor's assets, (4) the appointment of a trustee to administer and protect the estate, and (5) detailed review of the debtor's assets and obligations. Recognizing a foreign insolvency proceeding occurs in a very different context. By the time a petition for recognition arrives on our shores, **[**38]** the foreign court has already determined the debtor's eligibility under its own law, and the debtor's assets **[*1262]** are already under the control of the foreign proceeding. Nor would there be, for example, § 109(h) credit counseling for a debtor in a foreign proceeding before a Chapter 15 case would commence.

B.

On May 30, 1997, UNCITRAL adopted the Model Law on Cross-Border Insolvency. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY (1997),

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[11] *Section 544(b)* says:

> (1) Except as provided in *paragraph (2)*, the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under *section 502* of this title [*11 U.S.C. § 502*] or that is not allowable only under *section 502(e)* of this title [*11 U.S.C. § 502(e)*].
>
> (2) *Paragraph (1)* shall not apply to a transfer of a charitable contribution (as that term is defined in *section 548(d)(3)* [*11 U.S.C. § 548(d)(3)*]) that is not covered under *section 548(a)(1)(B)* [*11 U.S.C. § 548(a)(1)(B)*], by reason of *section 548(a)(2)* [*11 U.S.C. § 548(a)(2)*]. Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

[12] Collier on Bankruptcy summarizes § 548 as follows:

> Under *section 548*, the trustee may avoid a transfer made **[**37]** within two years prior to bankruptcy if there was an actual intent to hinder, delay or defraud creditors. The Code also recognizes presumptive fraudulent transfers. For instance, no specific fraudulent intent is required if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange and (1) was insolvent at the time of the transfer, (2) "was engaged in business or a transaction . . . for which any property remaining with the debtor was an unreasonably small capital" or (3) "intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay[.]"
>
> *1 Collier on Bankruptcy ¶ 1.05[5][c]* (quoting § 548(a)(1)).

https://uncitral.un.org/en/texts/insolvency/modellaw /cross-border_insolvency. "The Model Law [was] accompanied by a Guide to Enactment and Interpretation. . . . directed primarily to executive branches of Governments and legislators preparing the necessary enacting legislation, but it also provides useful insight for those charged with interpretation and application of the Model Law, such as judges." *Id.* "That the final negotiations [on the Model Law] included thirty-six UNCITRAL members—including the United States—representatives of forty observer states, and thirteen international organizations evidences its widespread support." *Tacon v. Petroquest Res. Inc. (In re Condor Ins. Ltd.), 601 F.3d 319, 322 (5th Cir. 2010)* (citing 1997 Enactment Guide at ¶ 8, which is ¶ 16 in the 2013 version). On December **[**39]** 15, 1997, the United Nations General Assembly passed a resolution recommending that member states consider incorporating UNCITRAL's Model Law, and that "all efforts be made to ensure that the Model Law, together with the [UNCITRAL Enactment] Guide, become generally known and available." General Assembly Resolution 52/158 ¶ 3-4. In addition, "UNCITRAL has established a reporting system for case law on UNCITRAL texts (CLOUT)" and composes a digest of international caselaw on interpretation of the Model Law to help promote uniform interpretation. UNCITRAL, DIGEST OF CASE LAW ON THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY, ¶ 9-11 (2021), *available at* https://uncitral.un.org/en/case_law/digests ("UNCITRAL Digest").

The Enactment Guide explains that the UNCITRAL Model Law is designed to help ensure the "rescue of financially troubled businesses" and promote "a fair and efficient administration of cross-border insolvencies." ¶ 5. It also states that "[t]he cross-border cooperation mechanisms established by the Model Law are designed to confront" the "increasing problem" of "[f]raud by insolvent debtors, in particular by concealing assets or transferring them to foreign jurisdictions." *Id.* at ¶ 6.

In 2005, Congress adopted the Model Law in *Title VIII of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 801* (2005). *Section 1501(a)* says:

> (a) The purpose of **[**40]** this chapter [*11 USCS §§ 1501 et seq.*] is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—
>
> (1) cooperation between—
>
> (A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and
>
> (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
>
> (2) greater legal certainty for trade and investment;
>
> (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;
>
> (4) protection and maximization of the value of the debtor's assets; and
>
> **[*1263]** (5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Section 1508, titled "Interpretation," tells us

that, "[i]n 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."

Chapter 15 applies when "assistance is sought in the United States by a foreign **[**41]** court or a foreign representative in connection with a foreign proceeding." *§ 1501(b)(1)*. *Section 1517* defines when a United States court can recognize a foreign proceeding.[13] A representative of the foreign proceeding must file an application that meets the requirements of *§ 1515*,[14] *see § 1517(a)(3)*, which include attaching a "certified copy of the decision commencing such foreign proceeding and appointing the foreign representative," a certified document from the foreign court affirming the legitimacy of the proceeding and the representative's authority, or other evidence of the proceeding's legitimacy. *See § 1515(b)*. *Section 1516(a)* also provides that, "[i]f the decision or certificate referred **[*1264]** to in *section 1515(b)* [*11 USCS § 1515(b)*] indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume."[15]

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[13] *Section, 1517*, Order granting recognition, provides in full:

> (a) Subject to *section 1506* [*11 U.S.C. § 1506*, the public policy exception], after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
>
> > (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of *section 1502* [*11 U.S.C. § 1502*];
>
> (2) the foreign representative applying for recognition is a person or body; and
>
> > (3) the petition meets the requirements **[**42]** of *section 1515* [*11 U.S.C. § 1515*].
>
> > (b) Such foreign proceeding shall be recognized—
>
> (1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or
>
> > (2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of *section 1502* [*11 U.S.C. § 1502*] in the foreign country where the proceeding is pending.
>
> (c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter [*11 U.S.C. §§ 1501 et seq.*].
>
> (d) The provisions of this subchapter [*11 U.S.C. §§ 1515 et seq.*] do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter [*11 U.S.C. §§ 1501 et seq.*] may be closed in the manner prescribed under *section 350* [*11 U.S.C. § 350*].

[14] *Section 1515* provides:

> (a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.
>
> (b) A petition for recognition shall be accompanied **[**43]** by—
>
> (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
>
> (2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
>
> > (3) in the absence of evidence referred to in *paragraphs (1)* and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.
>
> > (c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.
>
> (d) The documents referred to in *paragraphs (1)* and *(2) of subsection (b)* shall be translated into English. The court may require a translation into English of additional documents.

[15] "The term 'foreign representative' means a person or body, including a person or body appointed on an interim basis,

A foreign representative must be "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." § 101(24). Upon recognition, the foreign representative can sue and be sued in the United States for the purposes of the ancillary proceeding **[**44]** and may apply directly to a United States court for appropriate relief. § 1509(b)(1)-(2), § 1510. The foreign representative can then "participate as a party in interest in a case regarding the debtor under" the Bankruptcy Code as well. § 1512.

To recognize the foreign proceeding, the court must find that the "foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502." § 1517(a)(1). Section 1502(4) says that "'foreign main proceeding' means a foreign proceeding pending in the country where the debtor has the center of its main interests." Under § 1502(5), "'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment."

To find the proceeding fits under one of those definitions, the court must find the proceeding meets the definition of a "foreign proceeding." Chapter 1 defines a "foreign proceeding." Under § 101(23):

> The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or **[**45]** supervision by a foreign court, for the purpose of reorganization or liquidation.

Congress adopted this definition of "foreign proceeding" from the Model Law in the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*.[16]

Because Congress told us to consider the law's "international origin" in § 1508, and Congress was presumably aware of the UNCITRAL Enactment Guide, we consider the Guide important context. According to the Enactment Guide, the definition of "foreign proceeding" is designed to be broad and promote substance over form. "The definitions of proceedings or persons emanating from foreign jurisdictions avoid the use of expressions that may have different technical meaning in different legal systems and instead describe their purpose or function." Enactment Guide ¶ 65. The definition "avoid[s] inadvertently narrowing the range of possible foreign proceedings that might obtain recognition **[*1265]** and . . . unnecessary **[**46]** conflict with terminology used in the laws of the enacting State." *Id.*

The Guide says the definition of "foreign proceeding" contains four elements. They are: (1) a basis in insolvency-related law of the originating State; (2) involvement of creditors collectively; (3) control or supervision of the assets and affairs of the debtor by a court or another official body; and (4) reorganization or

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authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." § 101(24).

[16] Article 2(a) of the Model Law defines "foreign proceeding" as follows:

"Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

Other than replacing "pursuant to" with "under" and adding "or adjustment of debt" after "a law relating to insolvency," § 101(23) uses the same definition as the Model Law.

liquidation of the debtor as the purpose of the proceeding. *Id.* at ¶ 66. Essentially, the proceeding must involve a legally authorized entity taking control of a debtor's assets and affairs for the purpose of settling the debtor's obligations with his creditors. Moreover, the Enactment Guide makes clear that "the Model Law was formulated to apply to any proceeding that meets the requirements of article 2, subparagraph *(a)* [definition of foreign proceeding], independently of the nature of the debtor or its particular status under national law." ¶ 55.

Congress incorporated the elements discussed in the Enactment Guide into the text of § 101(23). "The phrase 'under a law relating to insolvency or adjustment of debt' emphasizes that chapter 15 is available not only to debtors that are technically insolvent or facing liquidation but also **[**47]** to debtors who are in financial distress and may need to reorganize." 2 Collier on Bankruptcy ¶ 101.23 (16th ed. 2023). Meanwhile, "the 'collective proceeding' requirement excludes from chapter 15 receivership proceedings that are for the benefit of a single creditor." *Id.* Courts applying § 101(23) have interpreted it "broadly." *Id.* (citing In re Betcorp Ltd., 400 B.R. 266 (Bankr. D. Nev. 2009), and In re Tri-Continental Exchange Ltd., 349 B.R. 627 (Bankr. E.D. Cal. 2006), both of which involved winding-up proceedings under the foreign country's corporate law that qualified as collective proceedings and in which courts had at least some control over the corporations' assets and affairs).

As discussed above, Section 1517 provides for recognition of one of two types of foreign proceedings: foreign main proceedings and foreign nonmain proceedings. The distinction—where the debtor has his "center of main interests"—is undefined in Chapter 15. 8 Collier on Bankruptcy ¶ 1502.01[4] (16th ed. 2023). According to the Enactment Guide, the concept of a "center of main interests" comes from a regulation implementing the European Union Convention on Insolvency Proceedings. ¶ 81. That EU Regulation says: "The 'centre of main interests' should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties." Council Regulation (EC) No 1346/2000 of 29 May 2000, Preamble ¶ 13. Paragraph 83 **[**48]** of the Enactment Guide quotes this regulation. Chapter 15 also establishes a presumption that the country where a debtor has its registered office is its center of main interests: "In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests." § 1516(c).

A court can also recognize a proceeding occurring outside the debtor's center of main interests if it meets the § 101(23) definition of a "foreign proceeding" and "if the debtor has an establishment within the meaning of section 1502 [11 USCS § 1502] in the foreign country where the proceeding is pending." § 1517(b). Under § 1502(2), "'establishment' means any place of operations where the debtor carries out a nontransitory economic activity." Essentially, a nonmain proceeding must occur in a country where the debtor has more than just assets. *See* 8 Collier on Bankruptcy ¶ 1517.02 ("By omission, a foreign proceeding that is premised only on the presence **[*1266]** of assets in the foreign country is not eligible for recognition.").

When a court recognizes a foreign main proceeding, some relief flows automatically under § 1520.[17] One key form of relief is the

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[17] Section 1520 provides:

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

automatic stay under 11 U.S.C. § 362. *See* § 1520(a)(1). The foreign representative also automatically **[**49]** gets "the rights and powers of a trustee under and to the extent provided by *sections 363* and 552." § 1520(a)(3). And the foreign representative gets the right to void post-petition transactions concerning property in the United States, as a trustee can in a full bankruptcy case under § 549.[18] § 1520(a)(2).

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(1) sections 361 and 362 [11 U.S.C. §§ 361 and 362] apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

(2) *sections 363*, 549, and 552 [*11 U.S.C. §§ 363*, 549, and 552] apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by *sections 363* and 552 [*11 U.S.C. §§ 363* and 552]; and

(4) section 552 [11 U.S.C. § 552] applies to property of the debtor that is within the territorial jurisdiction of the United States.

(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

(c) Subsection (a) does not affect **[**50]** the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

[18] Section 549(a) provides:

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)

Section 1521[19] outlines discretionary relief

(A) that is authorized only under section 303(f) or 542(c) of this title [11 U.S.C. § 303(f) or 542(c)]; or

(B) that is not authorized under this title or by the court.

[19] Section 1521 provides, in full:

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter [11 U.S.C. §§ 1501 et seq.] and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a) [11 U.S.C. § 1520(a)];

(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a) [11 U.S.C. § 1520(a)];

(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a) [11 U.S.C. § 1520(a)];

(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's **[**52]** assets, affairs, rights, obligations or liabilities;

(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

(6) extending relief granted under section 1519(a) [11 U.S.C. § 1519(a)]; and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) [11 U.S.C. §§ 522, 544, 545, 547, 548, 550, and 724(a)].

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an

available to the foreign representative **[*1267]** in an ancillary proceeding. Under § 1521(a), the foreign representative of a nonmain proceeding can request that the court provide any relief that automatically flows from recognition of a main proceeding under § 1521, including a stay on proceedings related to, and transfers and disposals of, the debtor's assets. § 1521(a)(1)-(3). Section 1521(a)(4) enables the foreign representative to take discovery, meaning the court can issue discovery orders enforceable with the contempt power. But § 1521(a)(7) denies the foreign representative the ability to utilize the "avoidance provisions of the Bankruptcy Code (sections 522, 544, 545, 547, 548, 550 and 724(a))." 8 Collier on Bankruptcy ¶ 1521.02 (16th ed. 2023). The court also has the discretion to, at the foreign representative's **[**51]** request, "entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected." § 1521(a)(5).

* * *

Unlike the procedures that begin a full bankruptcy case under Title 11, the procedures for recognizing and assisting a foreign proceeding do not naturally involve consideration of the debtor's eligibility to commence a full case under § 109(a). *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* § 24 at 167 (2012) (discussing how the whole-text canon "calls on the judicial interpreter to consider the entire text, in view of its structure and the physical and logical relation of its many parts"). The focus is on the foreign proceeding's purpose and legitimacy under the foreign law, the foreign debtor's relationship to the country where the proceeding is pending, and the **[**54]** court's authority to grant orders requested by the foreign representative to assist the proceeding. But unlike § 301, which requires a debtor-petitioner to specify the chapter of the Code under which he seeks relief—a reference to the eligibility requirements of § 109—Chapter 15 does not explicitly say that commencement of ancillary proceedings hinges on eligibility requirements in § 109(a). Rather, the foreign representative files for recognition of a foreign proceeding.

In addition, the relief available in ancillary proceedings is designed to assist the foreign proceeding. Such relief permits **[*1268]** the foreign representative to preserve property in the United States for distribution via the foreign proceeding and investigate the debtor's American affairs. Discovery is especially important when the foreign representative suspects the debtor has fraudulently transferred assets to another country, a problem UNCITRAL set out to address in the Model Law.

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examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required **[**53]** in that proceeding.

(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

(f) The exercise of rights not subject to the stay arising under section 362(a) [11 U.S.C. § 362(a)] pursuant to paragraph (6), (7), (17), or (27) of section 362(b) [11 U.S.C. § 362(b)] or pursuant to section 362(o) [11 U.S.C. § 362(o)] shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter [11 U.S.C. §§ 1501 et seq.].

But, in an ancillary proceeding, no new bankruptcy estate is created, and no new, American trustee is appointed to take custody of any American assets the debtor has. The foreign representative also cannot avail itself of the Bankruptcy Code's avoidance powers. **[**55]** [20] And the court need not "entrust the distribution of all or part of the debtor's assets located in the United States" to the foreign representative unless it "is satisfied that the interests of creditors in the United States are sufficiently protected." *§ 1521(a)(5)*.

The bottom line: Chapter 15 "focus[es] on eligibility of the foreign proceeding, not of the debtor." *8 Collier on Bankruptcy ¶ 1517.01* (16th ed. 2023). And "[i]n a chapter 15 case, the debtor in the foreign proceeding is not a debtor under title 11." *Id.* Requiring a court to consider whether a legitimate insolvency proceeding that otherwise meets the definition of a foreign proceeding under *§ 101(23)* has, as its subject matter, the assets and affairs of a debtor who could also file a United States bankruptcy petition puts a square peg in a round hole. Common sense tells us Congress would not do that in an off-handed manner.

According to the Majority opinion, Congress did so explicitly. It points out that *§ 103(a)*[21] makes Chapter One applicable to cases under Chapter 15, and that *§ 109* is in Chapter One. But the statute's structure and function indicate the debtor subject to the foreign proceeding does not become a debtor under the American Bankruptcy Code. He remains a debtor subject to the **[**56]** foreign proceeding, which the American court helps administer in an ancillary proceeding. That means the foreign debtor need not be eligible to become an American bankruptcy debtor for the court to recognize the foreign proceeding. So, there is no inherent connection between debtor-eligibility under *§ 109* and recognizing a foreign proceeding.

The use of the word "debtor" in the definition of a foreign proceeding in *§ 101(23)*, which requires that such proceeding is "under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court," might be read to create a connection between *§ 109(a)* debtor eligibility and recognition of foreign proceedings. *Section 1517(b)* also refers to "the country where the debtor has the center of its main interests" in describing a foreign main proceeding, and where "the debtor has an establishment" to describe a nonmain proceeding.

Do these uses of the word "debtor" **[**57]** import *§ 109(a)*'s eligibility requirements? True, we should ordinarily presume that **[*1269]** "[a] word or phrase . . . bear[s] the same meaning throughout a text." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* § 25 at 170 (2012). But "this canon is particularly defeasible by context." *Id.* at 171.

In *In re Goerg*, we considered a nearly identical question under the then-applicable Bankruptcy Code. And we held that, in the context of a broad definition of "foreign proceeding" designed to allow American courts

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[20] The Fifth Circuit has held the foreign representative can exercise the avoidance powers available under the foreign law in the United States under *§ 1521*. *Tacon v. Petroquest Res. Inc. (In re Condor Ins. Ltd.), 601 F.3d 319 (5th Cir. 2010)*.

[21] *Section 103(a)* says:

> (a) Except as provided in *section 1161* of this title [*11 U.S.C. § 1161*], chapters 1, *3*, and *5* of this title [*11 U.S.C. §§ 101 et seq.*, 301 et seq., and *501 et seq.*] apply in a case under chapter 7, *11*, *12*, or 13 of this title [*11 U.S.C. §§ 701 et seq.*, *1101 et seq.*, *1201 et seq.*, or *1301 et seq.*], and this chapter, *sections 307*, *362(o)*, *555 through 557*, and *559 through 562* [*11 U.S.C. §§ 101 et seq.*, *307*, *362(o)*, *555-557*, and *559-562*] apply in a case under chapter 15 [*11 U.S.C. §§ 1501 et seq.*].

to assist an expansive set of foreign insolvency proceedings, that definition's reference to "the debtor" referred merely to the entity "properly subject, under applicable foreign law," to the foreign proceeding. *In re Goerg, 844 F.2d at 1568*.

II.

A.

In *In re Goerg*, we considered whether a United States court could recognize and assist a West German bankruptcy proceeding. The debtor in the proceeding was a West German decedent's estate. Under West German law, and as in many other countries, a bankruptcy proceeding could be brought with respect to an insolvent decedent's estate. *In re Goerg, 844 F.2d 1562, 1563 n.1 (11th Cir. 1988)*. After the decedent's death, separate probate proceedings began in West Germany and in Fulton County, Georgia. The West **[**58]** German administrator petitioned the local court in Cologne to commence bankruptcy proceedings upon finding the estate was insolvent, and the court appointed Klaus Hubert Goerg to serve as bankruptcy trustee. *Id. at 1563*. Part of his task was to take custody of the decedent's foreign assets. *Id.* He petitioned the United States Bankruptcy Court for the Northern District of Georgia under *11 U.S.C. § 304 (1982)*,[22] seeking to enjoin the Fulton County probate proceeding and take custody of the decedent's property "for distribution in the West German bankruptcy proceeding." *Id. at 1563-64*.

The issue was whether the proceeding fit under the then-applicable definition of a foreign proceeding, which provided:

> **[*1270]** "[F]oreign proceeding" means proceeding, whether judicial or administrative and whether or not under

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[22] When we decided *In re Goerg*, *section 304* provided:

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

> (b) Subject to the provisions of *subsection (c)* of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

(1) enjoin the commencement or continuation of—

(A) any action against—

(i) a debtor with respect to property involved in such foreign proceeding; or

(ii) such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce **[**59]** a lien against the property of such estate;

> (2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

> (c) In determining whether to grant relief under *subsection (b)* of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

(1) just treatment of all holders of claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 304 (1982).

> bankruptcy law, in a foreign **[**60]** country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization.

Id. at 1565 (quoting *11 U.S.C. § 101(22) (1982)*). The bankruptcy court and the district court found that, because the definition of a "foreign proceeding" included the word "debtor," a United States bankruptcy court could not recognize a foreign proceeding unless the debtor subject to that proceeding would qualify as a "debtor" for an American bankruptcy proceeding. *In re Goerg, 844 F.2d at 1564*. Because a "debtor" under the United States Bankruptcy Code must be a "person"—which then, as now, did not include estates (which are entities but not persons as defined in Chapter 1), the lower courts found they could not assist the proceeding. *See id. at 1564-66*.

We reversed. Because the definition of foreign proceeding "expressly provide[d] that the foreign proceeding need not even be a bankruptcy proceeding, either under foreign or United States law," it would have been an "anomaly" to refuse to recognize the proceeding because the debtor in the West German proceeding was ineligible to commence **[**61]** a United States bankruptcy proceeding. *Id. at 1566-67*. We also noted that the definition of foreign proceeding included proceedings "for the purpose of liquidating an estate," which could be read to cover decedents' estates.[23] *Id.* So, the definition of foreign proceeding was both broad and ambiguous as to whether it covered the West German proceeding at issue. *Id.*

We then reasoned that, given the purpose of the statute to "help further the efficiency of foreign insolvency proceedings involving worldwide assets," and "in light of the comity concerns that induced Congress to enact" the ancillary proceedings statute, "it would make eminent sense for Congress to define expansively the class of foreign insolvency proceedings for which ancillary assistance is available." *Id. at 1568*. Put another way, in the context of defining a "foreign proceeding," the word "debtor" referred to the entity that was already the subject of a foreign insolvency proceeding and did not limit the statute's broad definition of a foreign proceeding under *11 U.S.C. § 101(22) (1982)*.

We derived the statute's purpose by outlining how an ancillary proceeding worked under *section 304*. We explained: "The filing of a *section 304* petition does not commence a full bankruptcy case; a *section 304* case **[**62]** is an ancillary case in which a United States bankruptcy court is authorized to apply its processes to give effect to orders entered in a foreign insolvency proceeding." *Id. at 1567*. An ancillary proceeding's "focus" under *section 304* was "on making United States processes available in aid of foreign proceedings, not actual bankruptcy administration." *Id. at 1568*. Whether the foreign debtor would be eligible to commence a bankruptcy proceeding in the United States would be irrelevant to this focus. By the time a petition from a foreign **[*1271]** representative arrived, the foreign court would have already decided the debtor's eligibility under its own insolvency law, and a trustee or

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[23] We explained that the word "estate" as used in the definition of foreign proceeding might have referred to bankruptcy estates like those created under *§ 541*, which would not necessarily include decedents' estates, or to decedents' estates. *Id. at 1567 n.11*; *see also* 2 Collier on Bankruptcy ¶ 304.01, at 304-12 (15th ed. 1987) ("That a foreign administration of a decedent's estate is . . . a 'foreign proceeding' is suggested by the expansive language of [*section 101(22)*] which includes within its scope proceedings under laws other than bankruptcy laws brought for the purpose of liquidating an estate.").

similar entity would have taken custody of the debtor's assets and affairs. And if granting relief were inappropriate, the American court retained discretion not to grant ancillary relief. *See id. at 1568* ("[T]he *section 304* debtor may ultimately receive no relief at all; it is within the discretion of the bankruptcy court, guided by the factors enumerated in *section 304(c)*, to determine what relief, if any, is appropriate."). That meant the foreign debtor did not necessarily have the benefit of the automatic stay applicable in full American bankruptcy proceedings. *See id.*

So, we **[**63]** concluded "it would make little sense to require that the subject of the foreign proceeding qualify as a 'debtor' under United States bankruptcy law." *Id. at 1568*. The point of the statute was to authorize American courts to recognize and assist foreign proceedings involving insolvencies in the various forms in which they might arrive. In light of this purpose, the reference to "the debtor" in describing the debtor's relationship to the country where the foreign proceeding commenced—"a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding"—did not import the debtor eligibility requirements for commencing a full bankruptcy proceeding. *See* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 20 (2012) ("The evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words.").

B.

The reasoning we provided for our holding in *In re Goerg* answers the question presented here. While the current definition of "foreign proceeding" in *§ 101(23)* is not identical to the definition applicable in *In re Goerg*, it contains the same material aspects **[**64]** we relied on in interpreting "foreign proceeding" under *11 U.S.C. § 101(22) (1982)*.

The current definition of a "foreign proceeding" broadly encompasses "collective judicial or administrative proceeding[s]" which are "under a law relating to insolvency or adjustment of debt" and "for the purpose of reorganization or liquidation," as long as "the assets and affairs of the debtor are subject to control or supervision by a foreign court." While it does not explicitly say the proceeding need not be under bankruptcy law, as *§ 304* did, the use of the phrases "under a law relating to insolvency or adjustment of debt" and "for the purpose of reorganization or liquidation" convey the same point that the substance and purpose of the proceeding, not its label, control. *See* Enactment Guide ¶ 65 ("The definitions of proceedings or persons emanating from foreign jurisdictions avoid the use of expressions that may have different technical meaning in different legal systems and instead describe their purpose or function."). The "anomaly" we identified in *In re Goerg* was that construing "foreign proceeding" to require a debtor that could qualify as an American bankruptcy debtor would make no sense given the foreign proceeding did **[**65]** not even need to be under the foreign country's bankruptcy law, as long as it was "for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization." *11 U.S.C. § 101(22) (1982)*. The current definition of a "foreign proceeding" broadly covers non-bankruptcy proceedings for the same purposes.

There are some differences between the old definition of "foreign proceeding" and the current version, but they are not material to the issue here. The old definition **[*1272]** was not limited to "collective" proceedings, though it was limited to "judicial or administrative" proceedings, as the current definition is. The

old definition did not specify that "the assets and affairs of the debtor [must be] subject to control or supervision by a foreign court." § 101(23). There was also no explicit divide between foreign "main" and "non-main" proceedings as contemplated in § 1517. The old definition did require that the proceeding occur "in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding," which is similar to the requirement that a "main proceeding" occur in the debtor's "center **[**66]** of its main interests." § 1517(b)(1); *see* § 1516(c) ("In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests."). Section 1517 also contemplates recognizing foreign proceedings pending where the debtor only has an "establishment." § 1517(b)(2).

These differences may have some impact on the scope of proceedings a United States court will recognize under Chapter 15. But they do not impact the issue here: whether, in the context of describing "a [foreign] law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court," reference to "the debtor" imposes § 109(a)'s eligibility requirements. We face the same "anomaly" here as we faced in *In re Goerg*, and we should resolve it the same way. *See Generali v. D'Amico, 766 F.2d 485, 489 (11th Cir. 1985)* ("This Court is bound by the case law of the Eleventh Circuit.").

Nor do any differences between the procedures and relief under section 304 and Chapter 15 change that analysis. For one thing, the purpose and function of ancillary proceedings are similar. Just as an ancillary proceeding's "focus" under section 304 was "on making United States processes **[**67]** available in aid of foreign proceedings, not actual bankruptcy administration," *In re Goerg, 844 F.2d at 1568*, the focus of Chapter 15 is on recognizing and assisting foreign insolvency proceedings. *See* 8 Collier on Bankruptcy ¶ 1517.01 (16th ed. 2023). And "[i]n a chapter 15 case, the debtor in the foreign proceeding" does not become "a debtor under title 11." *Id.*

As to differences, some relief, including the automatic stay under § 362, flows automatically upon recognition of a foreign main proceeding. § 1520(a). That was not so under section 304's discretionary regime. But nonmain proceedings do not necessarily benefit from the stay, and regardless, various key aspects of a full proceeding—like the trustee's assumption of avoidance powers and immediate custody of the bankruptcy estate—are not part of an ancillary proceeding.

C.

If anything, the current statutory provisions related to ancillary proceedings should cause us to double down on the reasoning we applied in *In re Goerg*. Chapter 15 provides its own definition of a "debtor" that controls references to "the debtor" in Chapter 15. Section 1502(1) says: "For the purposes of this chapter, the term . . . 'debtor' means an entity that is the subject of a foreign proceeding." That definition aligns with our interpretation of "debtor" **[**68]** in *In re Goerg*.

This definition is not reconcilable with § 109's definition of "who may be a debtor" under Title 11. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 28 at 183 (2012) ("If there is a conflict between a general provision and a specific provision, the specific provision prevails."). Section 109 says "only a *person* . . . may be a debtor under **[*1273]** this title," while §

1502(1) defines "debtor" as "an *entity* that is the subject of a foreign proceeding." (emphases added). As we discussed in *In re Goerg*, an entity—like a decedent's estate—is not necessarily a "person" under Chapter 1. Chapter 1 provides: "The term 'entity' includes person, estate, trust, governmental unit, and United States trustee." On the other hand, "[t]he term 'person' includes individual, partnership, and corporation, but does not include governmental unit, except . . . ." 11 U.S.C. § 101(41). *See also* 1 *Collier on Bankruptcy ¶ 1.01[2][a]* ("A 'person' may be eligible for relief under the Code by virtue of section 109, but one who is an 'entity' and not a 'person' would not be eligible.").

True, statutory provisions presumably "bear the same meaning throughout a text," and "[t]he provisions of a text should be interpreted in a way that renders them compatible, **[**69]** not contradictory." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* §§ 25, 27, at 170, 180 (2012). But "a material variation in terms suggests a variation in meaning." *Id.* § 25 at 170. Congress chose to use the word "entity" in defining a "'debtor' . . . that is the subject of a foreign proceeding" in § 1502(1). "'Entity' is the broadest of all definitions that relate to bodies or units" in the Bankruptcy Code. 2 Collier on Bankruptcy ¶ 101.15 (16th ed. 2023). And so, the definition of "debtor" for the purposes of Chapter 15 confirms that, when Chapter 15 refers to a "debtor" subject to a foreign proceeding, it means whatever "entity" is the subject of that proceeding, independently of the nature of the debtor and whether such debtor could be a debtor eligible to commence a U.S. bankruptcy case.

Consideration of the "international origins" of Chapter 15 pursuant to § 1508 also supports following *In re Goerg*. The Guide to Enactment of the Model Law says: "the Model Law was formulated to apply to any proceeding that meets the requirements of article 2, subparagraph *(a)* [definition of foreign proceeding], *independently of the nature of the debtor or its particular status under national law*." Enactment Guide ¶ 55 (emphasis added). The Enactment **[**70]** Guide also tells us exclusions from "foreign proceeding" should be clear. It states:

> Article 17 provides that, subject to article 6 [adopted in § 1506, Public Policy Exception], when the specified requirements of article 2 [adopted as § 101(23)] concerning the nature of the foreign proceeding (i.e. that the foreign proceeding is, as a matter of course, a collective proceeding for the purposes of liquidation or reorganization under the control or supervision of the court) and the foreign representative are met and the evidence required by article 15 [adopted as § 1515] has been provided, the court should recognize the foreign proceeding *without further requirement*.

Enactment Guide ¶ 29 (emphasis added). And the Guide goes on to say, "with a view to making the national insolvency law more transparent (for the benefit of foreign users of a law based on the Model Law), it is advisable that exclusions from the scope of the law be expressly mentioned."[24] *Id.* at ¶ 60.

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[24] Section 1501 expressly excludes from the application of Chapter 15, *inter alia*, "a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b) [11 U.S.C. § 109(b)]." § 1501(c)(1). Section 109(b)'s exclusion applies to, *inter alia*, "a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association . . . ." § 109(b)(2). That exclusion tracks the Model Law's suggestion to exclude "types of entities, such as banks or insurance companies, that are subject to a special insolvency regime" from application of the Model Law. Model Law, Art. I(2). The Enactment Guide also explains, "Banks or insurance companies are mentioned as examples of entities that the enacting State might decide to exclude from the scope of the Model Law." ¶ 56.

[*1274] The UNCITRAL's Digest on case law under the Model Law helps confirm our conclusion. The Digest states, in commenting on *In re Barnet, 737 F.3d 238 (2d Cir. 2013)*, which held that *§ 109(a)* eligibility is required in recognizing a foreign proceeding:

> The [Model Law] does not define the term **[**71]** "debtor" as it is not an element of the recognition regime; the [Model Law] provides only for recognition of the foreign proceeding at the request of the foreign representative. Nevertheless, there have been cases in which the court has considered whether or not the entity subject to the foreign proceeding is a debtor for the purposes of the law to be applied by the receiving court.

UNCITRAL Digest ¶ 43 (discussing "Use of the term 'debtor'" in interpreting the definition of a foreign proceeding). The Digest does not mention other international cases reaching the same conclusion as the Second Circuit, and the appellant does not cite any such cases here.[25]

And so, the reasonable reading of the word "debtor" in the definition of "foreign **[**72]** proceeding" is that it refers to whatever entity is the subject of the foreign insolvency proceeding.

D.

The course of proceedings below illustrate the problem with adopting Appellant's position: it would reward fraudulent transfers of a foreign debtor's assets in the United States because once the debtor sells his American property, the foreign proceeding cannot be recognized. The ancillary case began when, on March 24, 2021, Colin Diss, the representative of a United Kingdom bankruptcy proceeding, filed a petition under Chapter 15 for recognition of the U.K. proceeding as a main proceeding.[26] He also filed a motion for an order granting recognition. He requested the automatic relief available under *§ 1520* and the discretionary relief available under *§ 1521*.

Diss attached a declaration supporting the motion for recognition. In it, he said he was a "joint trustee in bankruptcy and foreign representative of Talal Qais Al Zawawi." The declaration explained that Al Zawawi moved to London with his then-wife in 2015, but she petitioned for divorce in 2017. The U.K. court entered a judgment in the divorce ordering him to pay his ex-wife £24,075,000. The U.K. court then issued a "Worldwide Freezing Order" **[**73]** against Al Zawawi on April 2, 2019, enjoining him "from disposing of, dealing with, or diminishing the value of his assets until the Judgment was paid in full."

When Al Zawawi failed to pay the divorce judgment, his ex-wife filed an involuntary petition for his bankruptcy on March 19, 2020. The U.K. bankruptcy court adjudged him bankrupt on June 29, 2020. The court also appointed Diss and **[*1275]** two others as joint trustees on July 15, 2020. Diss included certified copies of the U.K. orders finding Al Zawawi bankrupt and appointing the joint trustees with the Chapter 15 petition.

Diss further declared that:

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[25] The Digest does mention how, in a British case:

> the court said that as to whether the company was a debtor, no separate attention had been given to that requirement in other cases and the expression ["debtor"] was not defined in the [Model Law]. Each of the courts whose decisions on recognition applications were considered had, the court said, apparently been content to work on the basis that an entity subject to a foreign proceeding was, for that reason alone, within the relevant "debtor" concept.

Digest at ¶ 44 (citing *Rubin v. Eurofinance SA* [2009] EWHC 2129 (Ch) ¶ 39, *affirmed by* [2012] UKSC 46).

[26] The petition used Official Form 401, as required. *9 Collier on Bankruptcy ¶ 1002.02[7]* (16th ed. 2023).

> Upon information and belief, the Debtor has his principal assets in the Middle District of Florida, including an ownership interest [in] the following companies: (i) Qapa Investing Company U.S.A., Inc.; (ii) Qapa Holdings, Inc.; (iii) Hawthorne Village at Port Orange, Inc.; (iv) Hawthorne Groves Apartments, Inc.; and (v) Texas Q Zone, Inc.

Diss also claimed that he was seeking recognition to recover Al Zawawi's assets and investigate whether his funds were used to acquire other assets. Diss then successfully moved the Bankruptcy Court for provisional relief under *11 U.S.C. § 1519* to enjoin anyone from selling, **[**74]** encumbering, or disposing of Al Zawawi's American assets, and authorizing him to take discovery under *Rule 2004 of the Federal Rules of Bankruptcy Procedure*.

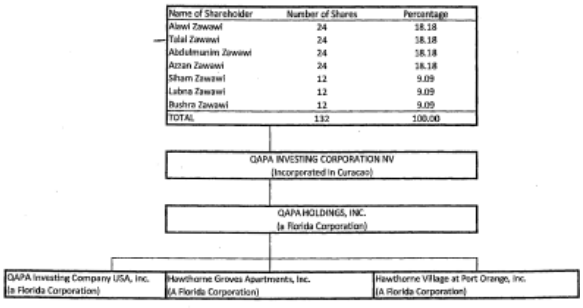
In an objection opposing recognition, Al Zawawi argued that, because he did not fit under *§ 109(a)*'s eligibility requirement, the petition needed to be dismissed. He claimed he had no personal knowledge that he had any assets in the United States, and that Diss's declaration did not provide factual support that he did.

Diss filed an amended declaration on April 20, 2021. He added declarations stating that Al Zawawi "holds an interest in the Companies, indirectly, through a Curaçao company called Qapa Investing Corporation N.V., which in turn ostensibly owns some or all of the Companies" referenced in the first declaration. He attached an organizational chart[27] mapping out his ownership interests in the Florida companies. QAPA Holdings, a Florida corporation, owns QAPA Investing Company USA, Hawthorne Groves Apartments, and Hawthorne Village; QAPA Investing Corporation NV, a Curaçao corporation in which he owns an 18.18% share, owns QAPA Holdings. His family members own the rest of the Curaçao holding company.

The amended declaration also raised the possibility that Al Zawawi fraudulently transferred **[**75]** his interest in Texas Q Zone, which Diss had alleged Al Zawawi owned in the first declaration. Diss declared that, on or about February 24, 2020—less than a month before his ex-wife filed an involuntary bankruptcy petition—Al Zawawi sold **[*1276]** "600 shares (the totality of [his] shareholding interest) in Texas Q Zone, Inc. to his brother, Azzan Qais Abdul Munem Al Zawawi, for US$1,582,901." According to Diss, this sale violated the freezing order entered in April 2019.

In a brief supporting recognition filed on April 20, 2021, Diss argued that the Bankruptcy Court should not follow *In re Barnet*, and that regardless, Al Zawawi had American assets. Those assets consisted of his beneficial ownership in the Florida companies, along with (1) a retainer Sequor Law—the Foreign representatives' lawyers' firm—"holds . . . in its trust account for the benefit of the Debtor's estate," and (2) Al Zawawi's jacket and wallet.

27



Diss obtained Al Zawawi's jacket and wallet and brought them to Sequor's Miami office, according to the brief, "for keeping on behalf of and for the benefit of the Debtor." Diss had declared that he did this in the amended declaration.

Diss attached to the memorandum documents he had **[**76]** obtained purporting to verify Al Zawawi's sale of his shares in Texas Q Zone. These included: a copy of the stock purchase agreement, dated February 24, 2020; a bank record showing Al Zawawi's receipt of the funds for the Texas Q Zone shares from his brother; and a copy of a "high importance" email dated April 8, 2021, from the financial comptroller of the "Zawawi Group"[28] to Alex MacKinnon, CEO of Texas Q Zone, stating that Al Zawawi had sold his 60% share in Texas Q Zone to his brother in February 2020. The email said that COVID-19 disruptions prevented prompter notice.

When this transfer actually occurred was crucial, especially if § 109(a) limited recognition. At a hearing on the motion for recognition in front of the Bankruptcy Court on April 22, 2021, Diss's counsel explained that the trustees only learned of Al Zawawi's transfer of his interests in Texas Q Zone after documents were produced under subpoenas issued pursuant to the Bankruptcy Court's § 1519 relief order. Alex Mackinnon, Texas Q Zone's CEO, testified in a deposition taken the day before the hearing that he also first learned about the transfer of Al Zawawi's interest on April 6, 2021, after the subpoenas were **[**77]** served. The corporate records of the company therefore still said Al Zawawi held 60% of the shares in the company. Diss's counsel characterized the documents reflecting the sale as occurring in February 2020 as "self-serving." Counsel also explained that "under English law this transfer would definitely be a transfer that would be viewable and potentially avoidable depending on additional information reflecting the value or the lack thereof of the alleged consideration, but most importantly is the timing."

Al Zawawi argued, however, that as of the date of the Chapter 15 petition, he "had no interest whatsoever in Texas Q Zone." He also argued the interests in the Curaçao holding company that owned the Florida companies and the retainer should not qualify as property under § 109(a).[29] Accordingly, Al Zawawi had disposed of his only assets in the United States, and thus did not qualify as a debtor under § 109(a). That meant the petition needed to **[*1277]** be dismissed, ending Diss's investigation. Al Zawawi reiterated the same argument on appeal.

Common sense tells us this result almost certainly cannot be correct. The Model Law that Congress adopted had, as one of its primary purposes, preventing bankruptcy debtors **[**78]** from fraudulently transferring and hiding assets. *See also* § 1501(a)(3) (Chapter 15 has as a purpose promoting "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors"). Yet Appellant's argument is that, if a United States Bankruptcy Court finds a potentially fraudulent transfer of all a foreign debtor's American assets was successfully executed, the Chapter 15 case is over because the debtor would be ineligible to then file for bankruptcy in the United States.

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[28] The Zawawi Group is a consulting group based in Oman that was founded in 1975 by Abdulmunim Al Zawawi, an Omani politician. ZAWAWI GROUP, *About Us*, https://www.zawawigroup.com/about/.

[29] As to Al Zawawi's wallet and jacket, his lawyer said he had not heard of Diss's lawyer's possession of them until ten minutes before the hearing and accused Diss's counsel of "planting evidence . . . a police tactic of the 1980's." The lawyer for Diss responded by reminding the Bankruptcy Court that Diss mentioned the personal property in paragraph 28 of the amended declaration.

Congress *could* write such a self-defeating statute. But in my view, it did not do so.

End of Document

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Spark Networks SE, et al., Entities that are the subject of a foreign proceeding.[1]	Chapter 15 Case No. 23–11883 (MFW) (Jointly Administered) **Re: Docket No. 48**

ORDER (I) RECOGNIZING AND GIVING FULL FORCE AND EFFECT TO THE RESTRUCTURING PLAN AND THE ORDER OF THE GERMAN RESTRUCTURING COURT CONFIRMING THE RESTRUCTURING PLAN, AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of Adrian Frankum, the foreign representative (the "Foreign Representative") of the above-captioned debtors (the "Chapter 15 Debtors") for entry of an order pursuant to sections 105(a), 1507, 1521 and 1525 of title 11 of the United States Code (the "Bankruptcy Code"): (i) giving full force and effect in the United States to the Confirmation Order and the confirmed Restructuring Plan; (ii) permanently enjoining all parties affected or bound by the Confirmation Order or the confirmed Restructuring Plan from commencing or taking any action prohibited by the Confirmation Order or the confirmed Restructuring Plan within the territorial jurisdiction of the United States with respect to claims or interests treated under the confirmed Restructuring Plan; (iii) waiving the 14-day stay of effectiveness of this Order; and (iv) granting related relief; and upon consideration of the

[1] The debtors in these chapter 15 cases are the following three entities (the last four digits of their respective federal taxpayer identification numbers, if any, follow in parentheses): Spark Networks SE (N/A), a stock corporation in the form of a *Societas Europaea* organized under German law; Spark Networks, Inc. (1733), a Delaware corporation; and Zoosk, Inc. (3601), a Delaware corporation. The Chapter 15 Debtors' noticing address in these Chapter 15 Cases is Kohlfurter Str. 41/43, 10999 Berlin.

[2] Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Motion.

Frankum Declaration, the Goodgion Declaration, the Morgen Declaration, the Sims Declaration, the Supplemental Frankum Declaration, and the Supplemental Morgen Declaration; and due and sufficient notice of the Motion, the Confirmation Order and the confirmed Restructuring Plan having been provided; and no objections to the Motion having been filed that have not been withdrawn, resolved or overruled; and the Court having found and determined that the relief sought in the Motion is consistent with the purposes of chapter 15 of the Bankruptcy Code and is in the best interests of the Chapter 15 Debtors and other parties in interest in the Chapter 15 Cases; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

C. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States Constitution.

D. These Chapter 15 Cases are cases under title 11 of the United States Code (as described in Section 108(d)(2) of the Internal Revenue Code of 1986, as amended) in which the Chapter 15 Debtors are under the jurisdiction of the Court. The German Restructuring Court has jurisdiction over the Chapter 15 Debtors in the StaRUG Proceeding. The implementation of the confirmed Restructuring Plan, which is approved by the Court herein, results in the discharge

of the prepetition funded indebtedness of the Chapter 15 Debtors and the reduction of existing equity to zero pursuant to the confirmed Restructuring Plan.

E. Venue is proper in this District pursuant to 28 U.S.C. § 1410.

F. Pursuant to an order of this Court dated December 14, 2023, the Foreign Representative was duly recognized as the "foreign representative" of the Chapter 15 Debtors within the meaning of section 101(24) of the Bankruptcy Code, and the StaRUG Proceeding was recognized as a "foreign main proceeding" with respect to Spark Networks SE within the meaning of section 1502(4) of the Bankruptcy Code and was recognized as a "foreign nonmain proceeding" with respect to Spark Networks, Inc. and Zoosk, Inc. within the meaning of section 1502(5) of the Bankruptcy Code (D.I. 34) (the "Recognition Order").

G. Notice of the Motion was sufficient under the circumstances, and no other or further notice is necessary or required.

H. The relief granted herein is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 1507, 1521 and 1525 of the Bankruptcy Code and will not cause undue hardship to any party in interest. To the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, the Chapter 15 Debtors, their creditors and other parties in interest.

I. The relief granted herein will effectuate the purposes and objectives of chapter 15 of the Bankruptcy Code and protect the Chapter 15 Debtors and the interests of their creditors and all parties in interest.

J. Absent the relief granted herein, the Chapter 15 Debtors may be denied the benefits of the StaRUG Proceeding and their global financial restructuring effectuated therein by creditors seeking to recover on discharged claims or interest holders seeking to recover on account of cancelled equity interests, which would be at odds with the purpose of chapter 15 of the Bankruptcy Code as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. Such results could threaten, frustrate, and ultimately jeopardize the benefits of the Spark Group's financial restructuring. Absent the Injunction, the Chapter 15 Debtors and their assets may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative, or regulatory actions or proceedings in connection with claims under the StaRUG Proceeding against the Chapter 15 Debtors and their assets, thereby interfering with and causing irreparable harm to the Chapter 15 Debtors, their creditors, and other parties in interest.

K. The Injunction contained herein (i) is within the Court's jurisdiction to enter, (ii) is essential to the success and objectives of the StaRUG Proceeding and the confirmed Restructuring Plan and (iii) confers material benefits on, and is in the best interests of, the Chapter 15 Debtors, their creditors and all other parties in interest.

L. The Foreign Representative and the Chapter 15 Debtors, as applicable, are entitled to the additional assistance and discretionary relief requested in the Motion under sections 1507 and 1521 of the Bankruptcy Code.

M. The relief granted herein will, in accordance with section 1507(b) of the Bankruptcy Code, reasonably assure: (i) the just treatment of all holders of claims against or interests in the Chapter 15 Debtors' property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the StaRUG Proceeding; (iii) the prevention of preferential or fraudulent dispositions of property of the

Chapter 15 Debtors; and (iv) the distribution of proceeds of the Chapter 15 Debtors' property substantially in accordance with the order prescribed in the Bankruptcy Code.

N. All creditors and other parties in interest, including the Chapter 15 Debtors, are sufficiently protected in the grant of the relief ordered hereby in compliance with 11 U.S.C. § 1522(a).

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. All objections, responses or oppositions to the relief requested in the Motion that have not been withdrawn, waived, settled, or resolved are hereby overruled on the merits with prejudice.

2. The Confirmation Order and the confirmed Restructuring Plan are hereby recognized, granted comity, and given full force and effect in the United States and are binding and enforceable, in accordance with their terms on all entities (as that term is defined in section 101(15) of the Bankruptcy Code) whose claims or interests are affected by the confirmed Restructuring Plan and each of their respective heirs, successors, assigns, trustees, subsidiaries, affiliates, officers, directors, agents, employees, representatives, attorneys, beneficiaries, guardians and similar officers, or any persons claiming through or in the right of any such persons or entities (collectively, other than the Chapter 15 Debtors and their expressly authorized representatives and agents, the "Affected Entities"), whether or not the Affected Entity consented to be bound by or participated in the StaRUG Proceeding; *provided*, *however*, that the foregoing shall not (i) apply to any obligations issued or required to be paid pursuant to the confirmed Restructuring Plan or the Confirmation Order or (ii) enjoin any party from bringing an action to

enforce the terms of the confirmed Restructuring Plan or any document, instrument or agreement executed to implement the same.

3. All Affected Entities are hereby permanently enjoined from, with respect to and only to the extent of, any debt, claim or interest affected by the Confirmation Order or the confirmed Restructuring Plan, except as expressly permitted by the confirmed Restructuring Plan:

i. Execution against any of the Chapter 15 Debtors' assets;

ii. The commencement or continuation, including the issuance or employment of process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Chapter 15 Debtors, or the seeking of any related discovery, which in each case is in any way inconsistent with or would otherwise violate the Confirmation Order or the confirmed Restructuring Plan;

iii. Taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against the Chapter 15 Debtors or any of their property or proceeds thereof, which in each case is in any way inconsistent with or would otherwise violate the Confirmation Order or the confirmed Restructuring Plan;

iv. Transferring, relinquishing or disposing of any property of the Chapter 15 Debtors to any entity other than the Foreign Representative and his authorized representatives and agents or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property, in each case to the extent inconsistent with or violative of the confirmed Restructuring Plan, the Confirmation Order, or German law;

v. Commencing or continuing in any manner, directly or indirectly, an individual action or proceeding against the Chapter 15 Debtors or concerning the Chapter 15 Debtors' assets, rights, obligations, or liabilities to the extent they (i) have not been stayed pursuant to sections 1520(a) and 362 of the Bankruptcy Code or the Recognition Order or (ii) are inconsistent with the confirmed Restructuring Plan or the Confirmation Order; and

vi. Declaring or treating the filing of the StaRUG Proceeding, these Chapter 15 Cases, the confirmed Restructuring Plan or the Confirmation

> Order as a default or event of default under any agreement, contract, or arrangement to which a Chapter 15 Debtor is a party;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States; *provided*, *further*, that nothing herein shall prevent any entity from (i) seeking enforcement of any rights or obligations under the confirmed Restructuring Plan or any document, instrument or agreement executed to implement the confirmed Restructuring Plan, (ii) taking any actions or entering into transactions permitted by the confirmed Restructuring Plan or (iii) seeking relief from the German Restructuring Court in the StaRUG Proceeding or this Court in these Chapter 15 Cases, as applicable, from the injunctions contained in this Order.

4. The Foreign Representative and the Chapter 15 Debtors are authorized and empowered to, and may in their discretion and without further delay, execute and deliver documents to effectuate the confirmed Restructuring Plan and take any action and perform any act necessary to implement and effectuate the terms of this Order, the Confirmation Order and the confirmed Restructuring Plan, including, without limitation, seeking any relief from this Court that may be necessary or appropriate. The Chapter 15 Debtors and the Foreign Representative are authorized and empowered to exercise all consent and approval rights provided for in the confirmed Restructuring Plan in the manner set forth in the confirmed Restructuring Plan.

5. No action taken by the Foreign Representative, the Chapter 15 Debtors, or their respective agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the StaRUG Proceeding, these Chapter 15 Cases, or any further proceeding commenced in these Chapter 15 Cases shall be deemed to constitute a waiver of the immunity afforded such persons

under 11 U.S.C. §§ 306 or 1510.

6. No party shall incur any liability for following the terms of this Order (whether by acting or refraining from acting).

7. Except to the extent modified herein, the relief granted in the Recognition Order shall continue in full force and effect.

8. Nothing herein shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding.

9. Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, including, but not limited to Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014, (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (c) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

10. These Chapter 15 Cases are each a case under title 11 of the United States Code (as described in Section 108(d)(2) of the Internal Revenue Code of 1986, as amended) in which the Chapter 15 Debtors are under the jurisdiction of the Court. The German Restructuring Court has jurisdiction over the Chapter 15 Debtors in the StaRUG Proceeding. The implementation of the confirmed Restructuring Plan, which is approved by the Court herein, results in the discharge of prepetition funded indebtedness of the Chapter 15 Debtors pursuant to the confirmed Restructuring Plan.

11. This Court retains jurisdiction with respect to the implementation, enforcement, amendment, or modification of this Order and prior orders in the Chapter 15 Cases.

Dated: May 17th, 2024
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Faculty

Joseph Curl KC is a barrister at the English bar practising from South Square chambers in London, specializing in insolvency litigation. He was called to the English bar in in 2007 and was appointed a Queen's Counsel (now King's Counsel, aka "silk") in 2021. An experienced advocate, Mr. Curl frequently acts for liquidators and other insolvency officeholders pursuing wrongdoing directors, often with an international element. He also has appeared in many of the U.K.'s leading cases in recent times dealing with challenges to insolvency officerholders' decision-making. He sits part-time in the English High Court as a deputy Insolvency and Companies Court Judge. In late 2025, Mr. Curl successfully acted for the Alabaman principal creditor in the restructuring of Argo Blockchain, a Nasdaq-listed and North America-based cryptocurrency miner, under Part 26A of the Companies Act 2006: [2025] EWHC 3395. This innovative use of the English court's cramdown powers avoided the loss of the company's Nasdaq listing, as would have happened had the company used a different insolvency process. Mr. Curl is also admitted to practice in the BVI and has argued before the courts there. In mid-2025, he successfully appeared in the Supreme Court of the United Kingdom in *Re MBI Inernational & Partners Inv* (in liquidation) and *Mitchell & Krys v Al Jaber*, [2023] UKSC 43, which involved U.K. recognition of a BVI liquidation and subsequent pursuit of the company's director for misappropriation of assets post-liquidation. He is the co-author of three books: Doyle, Keay & Curl: *Annoted Insolvency Legislation 2026* (2026, LexisNexis, 14th edition), *Insolvency Litigation* (2025, Edward Elgar Publishing; 2nd edition in preparation), and *Corporate Governance and Insolvency: Accountability and Transparency* (2023, Edward Elgar Publishing). His chapter "The Legacy of Sequana" is due to appear in *Directors and Creditors: Law and Liability*, forthcoming from Oxford University Press in 2026. Mr. Curl received both his B.A. in politics, philosophy and history in 2003, and his LL.B. law in 2006, from Birbeck, University of London.

Dr. H. Philipp Esser is an attorney and director with the law firm of Schultze & Braun in Achern, Germany. He specializes in German/American cross-border insolvencies, giving strategic legal advice to distressed-debt investors, financial instruments in insolvency and distressed M&A. His clients are primarily international distressed debt investors, institutional creditors, insolvency administrators and shareholders of companies in distress. Mr. Esser is an associate editor for the *ABI Journal* and publishes and speaks frequently on German and international insolvency and restructuring law, recently in particular on the European Insolvency Regulation (Recast). He also co-edited ABI's recent book *Chapter 15 for Foreign Debtors* (2015). Mr. Esser is admitted to practice law in Germany and in New York State. He studied at the Universities of Tübingen and Leipzig, holds a Ph.D. in law, and received an LL.M. from the University of Chicago Law School.

Leyza B. Florin is a shareholder at Sequor Law in Miami, shere she focuses her practice on complex restructuring, creditors' rights, cross-border insolvency and commercial litigation matters in state and federal courts. She represents creditors, trustees, receivers, assignees and debtors in high-stakes bankruptcy proceedings and related litigation, and she has served as an examiner, receiver, special master and neutral arbitrator. A nationally and internationally recognized practitioner, Ms. Florin is ranked by *Chambers USA* and *Chambers Global*, recognized in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law and Litigation – Bankruptcy, named a *Florida Super Lawyer*, and honored by *Latinvex* as being among the Top 100 Female

Lawyers in Latin America. She is a Fellow of the American College of Bankruptcy and has held numerous leadership roles, including past chair of IWIRC International, past chair of the Business Law Section of The Florida Bar, past president of the Bankruptcy Bar for the Southern District of Florida, and Education Director for ABI's Asset Sales Committee. She also has served as a lead adjunct professor at Florida International University College of Law, where she launched its bankruptcy clinical program. Ms. Florin is admitted to practice in Florida and before multiple federal courts. She received her B.A. from Miami College of Arts & Sciences and her J.D. *magna cum laude* from the University of Miami Law School, where she was articles and comments editor for the *Inter-American Law Review* and a member of the Order of the Coif.

Hon. Martin Glenn is Chief U.S. Bankruptcy Judge for the Southern District of New York in New York, initially sworn in on Nov. 30, 2006, and appointed Chief Judge on March 1, 2022. Previously, he was a law clerk for Hon. Henry J. Friendly, Chief Judge of the U.S. Court of Appeals for the Second Circuit, from 1971-72, and he practiced law with O'Melveny & Myers LLP in Los Angeles from 1972-85 and in New York from 1985-2006, where he focused on complex civil litigation including securities, RICO, financial and accounting fraud, and unfair competition. Judge Glenn is a member of the American Law Institute, International Insolvency Institute, New York Federal-State Judicial Council, New York City Bar, National Conference of Bankruptcy Judges and ABI. He is a past member of the Committee on International Judicial Relations of the U.S. Judicial Conference and the Bankruptcy Judge Advisory Group of the Administrative Office of the U.S. Courts. In addition, he is an adjunct professor at Columbia Law School, a contributing author to *Collier on Bankruptcy* and a frequent lecturer on bankruptcy-related issues. Judge Glenn received his B.S. from Cornell University in 1968 and his J.D. from Rutgers Law School in 1971, where he was an articles editor of the *Rutgers Law Review*.

Neema Griffin is a managing director within Teneo's Financial Advisory business in Georgetown, Grand Cayman, Cayman Islands. She has more than 18 years of financial advisory and insolvency experience with a specialization in contentious and cross-border insolvencies involving high-value litigation, investigations, international asset-tracing, personal bankruptcies and fund insolvencies. Ms. Griffin's wider financial advisory experience includes solvency reviews, M&A mandates and regulatory advisory. Her cross-border restructuring experience includes matters involving chapter 15 recognition and recognition proceedings in Hong Kong. Ms. Griffin is an insolvency appointment-taker in the Cayman Islands and a U.K.-licensed insolvency practitioner. She has served on the advisory board for ABI's International Caribbean Insolvency Symposium. Ms. Griffin is JIEB qualified and received her undergraduate degree from University College London in the U.K.