



CROSS-BORDER INSOLVENCY

Chapter 15: Pre-Filing Considerations and Related Transactions

ABI Webinar – September 24, 2026

1:00 p.m. – 2:15 p.m. ET

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JC

Joanna D. Caytas

Porter Hedges LLP

NG

Neema Griffin

Teneo

SG

Steven W. Golden

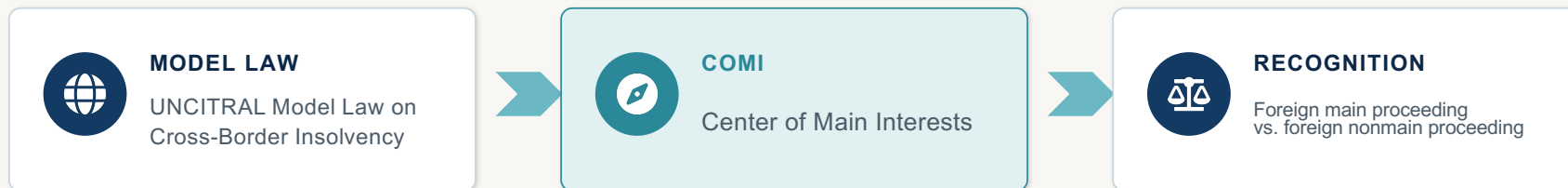
Pachulski Stang Ziehl & Jones LLP

LF

Leyza B. Florin

Sequor Law

Brief Overview of Chapter 15



COMI: sources to compare

UNCITRAL

No definition

EU

- Regulation (EU) 2015/848, 2016 O.J. (L141/19), Art. 3(1)
- *Eurofood IFSC Ltd.*, Case C-341/04 (ECJ)

UK

IR 2016, SI 2016/1024, r 1.2(2)

U.S.

11 U.S.C. § 1516(c)

Recognition framework

Chapter 15 distinguishes a foreign main proceeding from a foreign nonmain proceeding.

Formal Preparations

01



Foreign representative declaration

02



Foreign counsel declaration

03



Certified translations

04



Burden of proof

FOREIGN COUNSEL DECLARATION



Collective proceeding



Offshore eligibility

Build the evidentiary record before filing.

Eligibility in the U.S. — Circuit Split

ELEVENTH CIRCUIT

In re Al Zawawi

97 F.4th 1244 (11th Cir. 2024)

vs.

SECOND CIRCUIT

In re Barnet

737 F.3d 238 (2d Cir. 2013)

Recent applications



S.D. TEX.

In re Siu-Fung Ceramics Holdings Ltd.

No. 24-33299, 2026 WL 382424
(Bankr. S.D. Tex. Feb. 10, 2026)



S.D.N.Y.

In re Prince Glob. Holdings Ltd.

679 B.R. 146 (Bankr. S.D.N.Y. 2026)
and

In re Prince Glob. Holdings Ltd., 2026 WL
1758972 (Bankr. S.D.N.Y. June 18, 2026)

COMI Presumption



S.D. TEX. / FIFTH CIRCUIT PATH

In re Geden Holdings, Ltd.
674 B.R. 732 (Bankr. S.D. Tex.
2025), *order aff'd, appeal dismissed*
sub nom. In re Geden Holdings Ltd.,
No. BR 25-90138, 2026 WL
1949532 (S.D. Tex. July 6, 2026)



DISTRICT OF MASSACHUSETTS

In re Zheleznyak
679 B.R. 1 (Bankr. D. Mass. 2026)

Comparative focus How the COMI presumption is framed, supported, and tested in recent cases.

Why File Chapter 15?



Foreign asset tracing

Locate and pursue value across borders.



Investigations

Develop evidence and examine transactions.



Litigation

Support offensive and defensive litigation.



Stay

Address foreclosures and pending litigation.

Recognition can become a platform for cross-border action.

Why Not Chapter 11?

RESTRUCTURING ALTERNATIVES

UK Scheme of Arrangement
Restructuring Plan

CA Canadian
restructurings

CHAPTER 15s OF U.S. COMPANIES



S.D. TEX.

In re Fossil (UK) Global Services Ltd.
Chapter 15 Case No. 25-90525
(Bankr. S.D. Tex. Nov. 12, 2025)



S.D.N.Y.

In re NFE Global Holdings Ltd.
No. 26-11268 (MG), 2026 WL
2032660 (Bankr. S.D.N.Y. July 14,
2026)



COMI shifting

Offshore perspective

In re Ocean Rig UDW Inc.,
570 B.R. 687 (Bankr.
S.D.N.Y. 2017)

Decision lens Choose the restructuring forum and recognition path that fit the enterprise, proceeding, and COMI record.

Third-Party Releases in Chapter 15

Two recent decisions frame the discussion



DELAWARE

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

No. 25-10208 (TMH), 2025 WL 977967
(Bankr. D. Del. Apr. 1, 2025)



SOUTHERN DISTRICT OF NEW YORK

In re Odebrecht Engenharia e Construção S.A. – Em Recuperação Jud.

No. 25-10482 (MG), 2025 WL 1156607
(Bankr. S.D.N.Y. Apr. 21, 2025)

DISCUSSION FOCUS Recognition of foreign relief and the treatment of third-party releases.

Q&A

Continue the conversation with the webinar faculty.



Joanna D. Caytas

Porter Hedges LLP

✉ JCaytas@porterhedges.com



Neema Griffin

Teneo

✉ neema.griffin@teneo.com



Steven W. Golden

Pachulski Stang Ziehl & Jones LLP

✉ sgolden@pszjlaw.com



Leyza B. Florin

Sequor Law

✉ lflorin@sequorlaw.com

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Steven W. Golden^{a1}

Pachulski Stang Ziehl & Jones LLP
Wilmington, Del., New York and Houston

Brooke E. Wilson^{a1}

Pachulski Stang Ziehl & Jones LLP
San Francisco

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***22 COMI CHAMELEON:¹ IS “COMI MANIPULATION” IN CHAPTER 15 A BALLOONING PROBLEM?**

Chapter 15 of the Bankruptcy Code was adopted in 2005 and implemented by the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency in the U.S. “‘so as to provide effective mechanisms for dealing with cases of cross-border insolvency,’ while promoting international cooperation, legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of debtors' assets, and the rescue of financially troubled businesses.”² Under chapter 15, a bankruptcy court is obligated (subject to the other requirements set forth in chapter 15) to enter an order recognizing a foreign proceeding as a “foreign main proceeding” where the foreign proceeding is pending in the country where the foreign debtor has its center of main interests (COMI).³

As a result of such recognition, certain powerful relief is automatically available to the foreign debtor (such as the imposition of the automatic stay within the territorial jurisdiction of the U.S.).⁴ The bankruptcy court has the discretion to grant “any appropriate relief” that is “necessary to effectuate the purpose [of chapter 15] and to protect the assets of the debtor or the interests of the creditors.”⁵ Although chapter 11 of the Bankruptcy Code has long been viewed as the “gold standard for resolving financial distress,”⁶ insolvency laws in other countries -- including the U.K., the Netherlands, Germany and Singapore -- have implemented alternative regimes that offer some tools not available to chapter 11 debtors. For example, an English scheme of arrangement, which only needs to involve directly affected creditors, allows for a speedy restructuring of contractual arrangements (e.g., funded debt) by allowing for 75 percent of holders to bind the minority holders to a change in contractual terms -- something not permitted in the U.S.⁷ Moreover, English schemes of arrangement permit third-party releases “where such a compromise is ‘necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company to its own creditors.’”⁸

As a result, both courts⁹ and commentators¹⁰ have expressed increasing concern that a company could manipulate its COMI to manufacture a foreign main proceeding in a specific country, thereby availing itself of the unique tools of a specific country's insolvency regime and circumventing perceived restrictions of the Bankruptcy Code.¹¹ In *In re Mega Newco*,¹² the U.S. Bankruptcy Court for the Southern District of New York recently faced such a case of COMI manipulation.¹³

Mega Newco: “Laudable” COMI Manipulation

Mega Newco Ltd., the foreign debtor, was a wholly owned subsidiary of parent Mexican financial services company Operator de Servicios Mega, S.A. de C.V., Sofom, E.R. The parent and other subsidiaries of the parent were based and headquartered in

Mexico with branches across Mexico and one additional office in San Diego. Thus, for all intents and purposes, the enterprise group was a Mexican business operating almost entirely within Mexico.¹⁴

In 2020, the parent issued a set of notes (the “U.S. notes”) under an indenture that was governed by New York law. In 2024, the parent needed to restructure its obligations under the U.S. notes and negotiated terms of a possible restructuring with an *ad hoc* group of approximately 25 percent of the holders of the U.S. notes. However, the proposed restructuring of the U.S. notes posed logistical issues: The U.S. notes had to be *23 restructured through a bankruptcy proceeding because without one, the parent required the affirmative consent of 100 percent of the holders of the U.S. notes (an essentially impossible task) to effectuate the restructuring, and the parties wanted “a surgical restructuring” of only the U.S. notes.¹⁵ Given these constraints, the parties set their eyes on pursuing a scheme of arrangement under English law, which would allow all parties to propose a scheme of arrangement that just dealt with a single set of note obligations.¹⁶

Accordingly, approximately 45 days before Mega Newco filed papers to commence a scheme of arrangement proceeding in the High Court of Justice Business and Property Courts of England and Wales, Mega Newco was incorporated under the laws of England and Wales, listing a registered office with an address in London.¹⁷ Mega Newco was incorporated for the sole purpose of commencing the English scheme proceeding and proposing a scheme of arrangement to restructure the U.S. notes in accordance with the parties' agreement.¹⁸ The scheme was approved unanimously by those who voted (more than 75 percent of the holders of the U.S. notes), and no objections were filed with the English court.¹⁹

While the English scheme proceeding was pending, Mega Newco filed a petition under chapter 15 in the U.S. Bankruptcy Court for the Southern District of New York. Mega Newco sought recognition of the English scheme proceeding and enforcement, in the U.S., of the order entered by the English court approving Mega Newco's scheme.²⁰ Mega Newco “represented to the English Court that it has never engaged in any business, let alone any market-facing activities that it conducted from a location in the U.K.,” sufficient to show the existence of an “establishment” in England.²¹

Thus, as to the recognition of the English scheme proceeding under chapter 15 of the Bankruptcy Code, the issue before Hon. **Michael E. Wiles** was whether the English scheme proceeding was a “foreign main proceeding” taking place where Mega Newco has its COMI.²²

Given that “[c] hapter 15 is premised on the idea that a debtor who seeks to restructure 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,” the court noted that the “whole structure” in Mega Newco's restructuring was created for restructuring the parent's obligations. However, the parent's COMI was in Mexico, and the parent was not party to the English scheme proceeding.²³ In light of the admitted COMI manipulation, the court expressed concern over the “significant risks” of recognizing the English scheme proceeding as a foreign main proceeding:

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 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.²⁴

Considering the facts of the case, Judge Wiles framed the issue before him as follows: “[D]oes the underlying structure in this case constitute an improper manipulation of COMI?”²⁵ In addition, “should [the court] 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?”²⁶

Although the court recognized that the structure of the enterprise group's restructuring “could be used in another case as a way of frustrating and thwarting the legitimate expectations of creditors,”²⁷ Mega Newco did no such thing. Quite to the contrary, Judge Wiles commented that the scheme was pursued for “laudable objectives.”²⁸

Rather than frustrate creditors' expectations, the whole process “was worked out with the involvement and consent of the affected creditors.”²⁹ “Ironically,” the court noted, “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.”³⁰

Is COMI Manipulation Becoming a Problem?

With respect to recognition of foreign main proceedings under chapter 15 of the Bankruptcy Code, the oft-repeated specter of a debtor's “bad-faith COMI manipulation”³¹ is, at least today, largely theoretical.³² In *Mega Newco*, the foreign debtor's COMI manipulation was far from bad faith; it was a deliberate and consensual restructuring of *80 a portion of the enterprise group's financial (as opposed to operational) debt that used legal mechanisms that would have been unavailable under a plenary chapter 11 proceeding. With other countries' implementation of increasingly robust restructuring regimes occurring at the same time that less relief is available to chapter 11 debtors,³³ some believe that it is only a matter of time before a U.S. bankruptcy court is faced with a contested case of COMI manipulation in connection with chapter 15 recognition. How a bankruptcy court would approach a hotly disputed case of a debtor's COMI manipulation remains to be seen, but what is clear is that bankruptcy judges are ever vigilant about such a possibility, and appropriately approach even “laudable” cases of COMI manipulation with care.

Footnotes

¹ With apologies to Culture Club.

^{a1} Steve Golden is a partner with Pachulski Stang Ziehl & Jones LLP in Wilmington, Del., New York and Houston. Brooke Wilson is an associate in the firm's San Francisco office.

² *Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 (2d Cir. 2013) (quoting 11 U.S.C. § 1501(a)).

³ 11 U.S.C. § 1517(b)(1).

⁴ 11 U.S.C. § 1520(a).

⁵ 11 U.S.C. § 1521(a).

⁶ Bruce A. Markell, “The International Two-Step: Recognizing Domestic Chapter 15 Reorganizations,” 98 *Am. Bankr. L. J.* 1, 4 (2024).

⁷ See *id.* at 10-11.

- 8 *Re Haya Holdco 2 Plc*, [2022] EWHC (Ch) 1079 at [38] (Eng.) (quoting *Re Lehman Bros. Int'l*, [2009] EWCA Civ. 1161).
- 9 See, e.g., *Fairfield Sentry*, 714 F.3d at 135 (discussing *Lavie v. Ran (In re Ran)*, 607 F.3d 1017, 1026 (5th Cir. 2010)); *In re Intercement Brasil S.A.*, 668 B.R. 802, 819 (Bankr. S.D.N.Y. 2025).
- 10 See e.g., Markell, *supra* n.6; Anthony J. Casey & Joshua C. Macey, “Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars,” 37 *Emory Bankr. Dev. J.* 463 (2021).
- 11 In this article, the authors refer to the deliberate creation of COMI in a particular country for the sole intent of commencing a plenary proceeding in such jurisdiction as “COMI manipulation.” This terminology is intended to contrast with what is frequently referred to as “forumshopping,” which is when a company has existing options of where it could commence a plenary proceeding under applicable laws. The use of these terms are not intended to evoke any connotation (pejorative or otherwise), but rather to distinguish between different factual situations.
- 12 No. 24-12031, 2025 Bankr. LEXIS 398 (Bankr. S.D.N.Y. Feb. 24, 2025).
- 13 2025 Bankr. LEXIS 398, at *5 (“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.”).
- 14 *Id.* at *2; see also Verified Petition for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Order and Related Scheme and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code, No. 24-12031 (Bankr. S.D.N.Y. Nov. 25, 2024), ECF No. 2, ¶¶ 4-5.
- 15 *Mega Newco*, 2025 Bankr. LEXIS 398, at *3-4.
- 16 *Id.* at *3.
- 17 *Id.* at *4-5.
- 18 *Id.*; see Verified Petition, *supra* n.14 at ¶ 11.
- 19 *Mega Newco*, 2025 Bankr. LEXIS 398, at *6.
- 20 *Id.* at *5.
- 21 *Id.* at * 7.
- 22 *Id.* at *7-9.
- 23 *Id.* at * 8-9.
- 24 *Id.* at * 8-10.

25 *Id.* at *10.

26 *Id.*

27 *Id.* at *11.

28 *Id.*

29 *Id.*

30 *Id.* at *12.

31 *Fairfield Sentry*, 714 F.3d at 135.

32 *In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169 (Bankr. S.D.N.Y. 2017), perhaps presents the closest that a U.S. court has come to declining to recognize a foreign proceeding due to alleged bad-faith COMI manipulation. However, in *Oi Brasil*, it was a creditor -- not the debtor -- that allegedly engaged in COMI manipulation.

33 *See, e.g., Harrington v. Purdue Pharma LP*, 603 U.S. 204 (2024).

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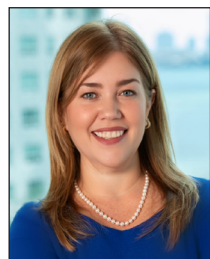
Eligibility Under § 109(a) in Ch. 15: The Case for Favoring the Eleventh Circuit Approach

BY LEYZA B. FLORIN AND ALEJANDRO RODRIGUEZ VANZETTI

The intersection of domestic statutory requirements and international insolvency framework has triggered a sharp division among federal courts regarding who qualifies for relief under chapter 15. Particularly, § 109(a) of the Bankruptcy Code provides that “only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.”¹ Few threshold questions in cross-border insolvency have proved as divisive as whether § 109(a) governs a foreign representative’s petition for recognition under chapter 15. The Eleventh Circuit says *no*, giving effect to the statute’s purpose while invoking principles of international comity and in reliance of prior jurisprudence under 11 U.S.C. § 304.² Conversely, the Second Circuit, and more recently the Southern District of Texas Bankruptcy Court, say *yes*, relying on a plain reading of the Bankruptcy Code.³

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

Chapter 15’s Comity-Based Framework



Leyza B. Florin
Sequor Law; Miami

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

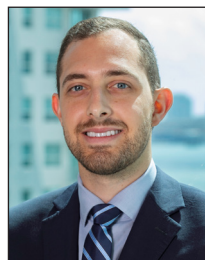
To illustrate, securing recognition as a “foreign main proceeding” triggers the automatic stay and opens the door for foreign representatives to seek discovery and other relief as to the debtor’s U.S. assets.⁷ Recognition, in other words, “is what determines whether the parties to a foreign proceeding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

With regard to § 109(a) eligibility, two schools of thought have emerged: The Eleventh Circuit, in *In re Goerg* and later

Leyza Florin is a shareholder at Sequor Law in Miami and a member of ABI’s Board of Directors and International Committee. Alejandro Vanzetti is an attorney in the same office.

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

The Eleventh Circuit’s *Al Zawawi*



Alejandro
Rodriguez Vanzetti
Sequor Law; Miami

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

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

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

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

1 11 U.S.C. § 109(a).

2 *In re Goerg*, 844 F.2d 1562, 1568 (11th Cir. 1988); *In re Al Zawawi*, 97 F.4th 1244, 1255 (11th Cir. 2024).

3 *Drawbridge Special Opportunities Fund LP v. Barnet* (*In re Barnet*), 737 F.3d 238, 247 (2d Cir. 2013); *In re Siu-Fung Ceramics Holdings Ltd.*, No. 24-33299, 2026 Bankr. LEXIS 355, at *45 (Bankr. S.D. Tex. Feb. 10, 2026).

4 11 U.S.C. § 1501(a).

5 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 801 (2005); *Al Zawawi*, 97 F.4th at 1252 (identifying former § 304 as chapter 15’s predecessor); 11 U.S.C. § 1501(a).

6 *Al Zawawi*, 97 F.4th at 1264 (Tjoflat, J., specially concurring) (quoting *Tacon v. Petroquest Res. Inc.* (*In re Condor Ins. Ltd.*), 601 F.3d 319, 322 (5th Cir. 2010)).

7 11 U.S.C. § 1520(a)(1); *Al Zawawi*, 97 F.4th at 1248.

8 *Al Zawawi*, 97 F.4th at 1251.

9 *Id.* at 1255; *In re Goerg*, 844 F.2d at 1567–68.

10 *Barnet*, 737 F.3d at 247.

11 *Al Zawawi*, 97 F.4th at 1247–48.

12 *Id.* at 1248.

13 *Id.*

14 *Id.*

15 *Id.* at 1249–50.

that § 109(a) does not apply.¹⁶ *Al Zawawi* appealed to the Eleventh Circuit. While agreeing with *Barnet*'s plain-reading analysis, the panel found that it was bound by circuit precedent in *Goerg*, which held that eligibility under the Code was not a prerequisite to ancillary assistance under chapter 15's predecessor, former § 304.¹⁷

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

Faced with these choices, in opting for the latter approach, and recognizing that the statute is subject to more than one interpretation, the *Goerg* court looked to the "purpose" of § 304, which is generally "to help further the efficiency of foreign insolvency proceedings involving worldwide assets."²⁰ And because the purpose of chapter 15 tracks that of former § 304 by, among other things, providing "effective mechanisms for dealing with cases of cross-border insolvency[.]" the *Al Zawawi* panel followed the logic of *Goerg* and held that debtor eligibility under chapter 1 is not a prerequisite for recognition under chapter 15.²¹ With § 109(a) out of the picture, the § 1517 requirements were met, and *Al Zawawi* was properly subject to be recognized as a foreign proceeding.²²

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

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

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

To trace and recover these assets, they filed a chapter 15 petition seeking recognition of the group liquidation and the

Lee 2001 bankruptcy as foreign main proceedings.²⁹ Nine months later, a representative wired a \$1,200 retainer to U.S. counsel that was later deposited into a Houston trust account.³⁰ The foreign representatives then filed an amended petition, arguing that the retainer satisfied § 109(a).³¹

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

Observing that the Fifth Circuit had described the § 1517 recognition standard without ever confronting whether § 109(a) is a precondition, the court found answering the question "inescapable."³⁴ It applied a plain-meaning analysis, expressly adopting *Barnet*'s reasoning. It found that § 103(a) makes all of chapter 1 applicable to chapter 15, noting that § 109(a) sits within chapter 1, thus creating a requirement for any debtor.³⁵ The court rejected the foreign representatives' argument that nothing in §§ 1515 and 1517(a) requires that § 109(a) be satisfied for the court to grant recognition, reasoning that this argument "fails to comport with a straightforward reading of the text."³⁶ Focusing on "interrelated terms" under chapters 1 and 15, the court reasoned that both "foreign proceeding" and "foreign representative" are defined in chapter 1, and both terms reference — and thus rely on — the term "debtor," which is also defined in chapter 1.³⁷

The court further held that chapter 15's own definition of "debtor" in § 1502(1) is reconcilable with § 109(a): Following *Barnet* and a concurrence by Judge Lagoa in *Al Zawawi*, § 1502(1) supplants the § 101(13) definition for chapter 15 purposes but does not displace § 109(a)'s separate requirement to qualify as a debtor under title 11.³⁸ The court distinguished the Eleventh Circuit's contrary holding, noting without extensive analysis that *Al Zawawi* rested on that circuit's prior-precedent rule rather than disagreement with *Barnet*'s plain-meaning analysis.³⁹

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

16 *Id.* at 1250.

17 *Id.* at 1255 (discussing *In re Goerg*, 844 F.2d 1568).

18 *Al Zawawi*, 97 F.4th at 1252–53.

19 *Id.* at 1253 (quoting *In re Goerg*, 844 F.2d 1567).

20 *Goerg*, 844 F.2d at 1568.

21 *Al Zawawi*, 97 F.4th at 1255.

22 *Id.*

23 *Siu-Fung*, 2026 Bankr. LEXIS 355, at *1–3.

24 *Id.* at *3–4.

25 *Id.* at *4–5.

26 *Id.* at *6–15.

27 *Id.* at *15.

28 *Id.* at *15–16.

29 *Id.* at *20–22.

30 *Id.* at *21–22.

31 *Id.* at *54.

32 *Id.* at *86.

33 *Id.* at *45–47. With regard to the Lee 2001 bankruptcy, the parties did not dispute that § 109(a) was satisfied. *Id.* at 64.

34 *Id.* at *32.

35 *Id.* at *32–34 (citing *Barnet*, 737 F.3d at 247).

36 *Id.* at *34–35.

37 *Id.*

38 *Id.* at *37–40 (citing *Al Zawawi*, 97 F.4th 1244, 1256–60 (11th Cir. 2024) (Lagoa, J., specially concurring)).

39 *Id.* at *38 (citing *Al Zawawi*, 97 F.4th at 1257).

40 *Id.* at *53–57.

41 *Id.* at *57–63.

Eligibility Under § 109(a) in Chapter 15: The Eleventh Circuit Approach

from page 31

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

Why the Goerg and Al Zawawi Approaches Work

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

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

Section 1508, titled “Interpretation,” should also serve as a guidepost: “In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.”⁴⁶ Indeed, Congress has

incorporated certain elements of *The Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency* (issued alongside the Model Law) into the text of § 101(23), and the *Enactment Guide* defines terms broadly to avoid varying technical meanings in different legal systems.⁴⁷ Why, then, apply a domestic eligibility filter absent from the Model Law?

At bottom, chapter 15 does not create a new bankruptcy estate; it merely recognizes a foreign proceeding, and a debtor does not become a debtor under the Bankruptcy Code but simply remains the subject of the foreign proceeding.⁴⁸ As the leading treatise explains and Judge Tjoflat emphasized, “In a chapter 15 case, the debtor in the foreign proceeding is not a debtor under Title 11.”⁴⁹ Chapter 15 supplies its own definition precisely because that entity never becomes a debtor under Title 11.⁵⁰

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

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

47 *Al Zawawi*, 97 F.4th at 1265 (Tjoflat, J., specially concurring); *Enactment Guide* ¶ 65.

48 *Al Zawawi*, 97 F.4th at 1268 (Tjoflat, J., specially concurring).

49 *Id.* (quoting 8 *Collier on Bankruptcy* ¶ 1517.01 (16th ed. 2023)).

50 *Id.* at 1260 (Tjoflat, J., specially concurring) (quoting 8 *Collier on Bankruptcy* ¶ 1517.01 (16th ed. 2023)).

51 *Al Zawawi*, 97 F.4th at 1274, 1274–77 (Tjoflat, J., specially concurring). In *Al Zawawi*, the foreign representatives claimed that, less than a month before the involuntary petition, Al Zawawi sold his interest in a U.S.-connected entity, Texas Q Zone Inc., to his brother — a transfer the representatives contend was in violation of the U.K. freezing order. *Id.* at 1274–76 (Tjoflat, J., specially concurring).

52 *Id.* at 1277.

42 *Id.* at *57–63 (citing *In re Equinox Oil Co.*, 300 F.3d 614, 618 (5th Cir. 2002); *In re Octavio Admin. Pty Ltd.*, 511 B.R. 361 (Bankr. S.D.N.Y. 2014); *In re Zawawi*, 634 B.R. 11 (Bankr. M.D. Fla. 2021)).

43 *Goerg*, 844 F.2d at 1568; *Al Zawawi*, 97 F.4th at 1255.

44 *Siu-Fung*, 2026 Bank. LEXIS 355 at *42–43 (quoting *In re Barnet*, 737 F.3d at 251).

45 11 U.S.C. § 1501(a).

46 11 U.S.C. § 1508.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

NFE Global Holdings Limited, *et al.*,

Debtors in a Foreign Proceeding.

FOR PUBLICATION

Case No. 26-11268 (MG)

(Jointly Administered)

**MEMORANDUM OPINION RECOGNIZING THE ENGLISH
PROCEEDINGS AS FOREIGN MAIN PROCEEDINGS AND
GRANTING RELATED RELIEF**

A P P E A R A N C E S:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
320 S. Canal St.
Ste 47th Floor
Chicago, IL 60606

By: Ron Meisler, Esq.
Christopher Dressel, Esq.
Bryan Uelk, Esq.

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
22 Bishopsgate
London EC2N 4BQ

By: Peter Newman, Esq.
Nicole Stephansen, Esq.

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Rodney Square
920 N. King St.
Wilmington, DE 19801

By: Joseph Larkin, Esq.
Stephen Della Penna, Esq.

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Ave.
Palo Alto, CA 94301

By: Jennifer Madden, Esq.

HERBERT SMITH FREEHILLS KRAMER LLP
Attorneys for Ad Hoc Group of GLP Preferred Unit Holders
1177 Avenue of the Americas
New York, New York 10036
By: Kyle Ortiz, Esq.

MARTIN GLENN
CHIEF UNITED STATES BANKRUPTCY JUDGE

The two foreign debtors in this chapter 15 case—NFE Global Holdings Limited, incorporated in 2021 in the U.K., and NFE Brazil Newco Ltd., incorporated in April 2026 in the U.K., are affiliates of New York-based New Fortress Energy Inc., a Delaware corporation. The two foreign debtors filed cases in the U.K. in March and April 2026 under Part 26A of the U.K. Companies Act 2006 seeking to implement debt swap plans designed to cut substantial debt from the New Fortress balance sheet while preserving a portion of existing equity holdings. Having succeeded in gaining approval of the plans in the U.K., the foreign debtors now seek recognition and enforcement of the Part 26A plans in the U.S. in this chapter 15 case. No objections were filed to the requested relief in this chapter 15 case. The Court has already entered an order granting the requested relief. In doing so the Court nevertheless indicated that it intended to issue an opinion explaining its reasoning.

Companies are increasingly seeking to take advantage of a foreign restructuring mechanism by which the companies seek to gain approval in the courts in the U.K. for plans under Part 26 (schemes of arrangement) or Part 26A (restructuring plans) and then to obtain recognition and enforcement of the plans in U.S. chapter 15 cases, particularly where the plans include modifications of New York-law-governed debt.¹ The U.K.-

¹ Where companies believe they need only a balance sheet restructuring rather than an operational restructuring, in which chapter 11 proceedings excel, the time and costs involved in pursuing the foreign court solution followed by a chapter 15 case is allegedly less.

approved plans—as is true in this case—often include releases of non-debtor affiliate guarantees of the original debt, as well as broad exculpation protection for the parties involved in the restructuring proceedings. The releases and exculpation provisions permissible under U.K.-law push the boundaries of available relief in a chapter 11 case. While at least one of the foreign debtors in this case was incorporated in the U.K. in 2021, the other foreign debtor was incorporated in the U.K. in April 2026 shortly before the U.K. proceedings were filed. Is “COMI tourism”—where a foreign debtor that is an affiliate of a U.S.-based (or other non-U.K.-based debtor) corporation was established specifically for the purpose of pursuing a foreign restructuring solution followed by a chapter 15 case—a basis to deny recognition and enforcement in a chapter 15 case? The Court has already entered its order recognizing and enforcing these foreign debtors’ plans in this case. The Court obviously concluded that the foreign debtors in this case were entitled to the requested relief. While there is nothing in the text of chapter 15 that precludes recognition and enforcement in cases such as this, there are some cautionary principles that a chapter 15 court should consider before approving the requested relief.

The particular risk is that by establishing a U.K. debtor to file under Part 26 or Part 26A., a debtor may circumvent the requirements of the U.S. Bankruptcy Code to disadvantage some creditors. While not the case here, the Court discusses the issue in the context of these proceedings to describe the analytical framework that the Court applied before granting its approval.

I. BACKGROUND

Pending before the Court are the *Chapter 15 Petition for Recognition of a Foreign Proceeding* (ECF Doc. # 1) and the *Verified Petition for (I) Recognition of Foreign Main*

Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code (the “Verified Petition” or “VP,” ECF Doc. # 3) filed in the above-captioned chapter 15 cases (the “Chapter 15 Cases”) by Christopher Boas as the authorized foreign representative (the “Foreign Representative”) of the above-captioned foreign debtors (the “Debtors²”) that are the subject of proceedings (the “English Proceedings”) pending before the High Court of Justice of England and Wales (the “English Court”) concerning two restructuring plans (collectively, the “Restructuring Plans”) proposed pursuant to Part 26A of the Companies Act of 2006 (as amended, the “Companies Act”) seeking recognition of the English Proceedings as “foreign main proceedings.”

In support of the Verified Petition, the Debtors submitted (a) the *Declaration of Nicole Stephansen in Support of the Verified Petition for (I) Recognition of the Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “Stephansen Declaration, ECF Doc. # 4); (b) the *Declaration of Christopher Boas in Support of the Verified Petition for (I) Recognition of the Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (the “Boas Declaration,” ECF Doc. # 5); and (c) the *Supplemental Declaration of Nicole Stephansen in Support of the Verified Petition for (I) Recognition of the Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of*

² The Debtors and the last four digits of their foreign identification numbers are NFE Global Holdings Limited (9588) and NFE Brazil Newco Limited (1053). The address of NFE Global Holdings Limited’s registered office is Suite 1, 7th Floor, 50 Broadway, London SW1H 0BL, United Kingdom, and the address of NFE Brazil Newco Limited’s registered office is Suite 1, 7th Floor, 50 Broadway, London SW1H 0DB, United Kingdom.

the Bankruptcy Code (the “Supplemental Stephansen Declaration,” ECF Doc. # 17). On June 19, 2026, the Debtors filed a revised proposed order (the “Proposed Order,” ECF Doc. # 18).

No objections were filed. The Debtors filed a *Certificate of No Objection* (ECF Doc. # 19) on June 22, 2026.

Additionally, in response to the Court’s *Order for Production of Expert Report* (ECF Doc. # 22) requesting that “the Foreign Representative shall file on the docket . . . any expert affidavits or reports submitted to the U.K. Court in connection with sanction of the Part 26A Plan regarding recognition of the Part 26A Plan in the Chapter 15 case,” the Foreign Representative filed the *Notice of Filing of Expert Opinion* (ECF Doc. # 23). Attached as Exhibit A is the *Expert Opinion of Daniel M. Glosband* (the “Expert Report”), which is “the only expert opinion submitted to the English Court that addresses recognition of the Restructuring Plans in the Chapter 15 Cases.”

The Foreign Representative also filed the *Notice of Filing of Relevant Alternative Report* (ECF Doc. # 27). Attached as Exhibit A is the *Relevant Alternative Report* (the “RAR”) prepared by Alvarez and Marsal (“A and M”).

For the following reasons, the Court **GRANTED** the Requested Relief and (i) recognized the English Proceedings as “foreign main proceedings”; (ii) recognized the Foreign Representative as the “foreign representative” of the Debtors; (iii) found that the Verified Petition meets the requirements of section 1515 of the Bankruptcy Code; and (iv) recognized the English Court’s Sanction Order, giving full force to the Sanction Order and the Restructuring Plans, including the Plan Releases.

A. General Background

New Fortress Energy Inc. (“NFE” or the “Parent”) is the ultimate parent of other direct and indirect subsidiaries (collectively the “Group”) including the Debtors, NFE Global Holdings Limited (“NFE Global”) and NFE Brazil Newco Limited (“NFE Brazil”). (VP ¶ 15.) The Group is an integrated gas-to-power energy infrastructure company that owns and operates natural gas and liquefied natural gas (“LNG”) infrastructure, along with an integrated fleet of ships. (*Id.* ¶ 11.) Additionally, it builds modular LNG manufacturing facilities which can be deployed around the world and used to liquify natural gas. (*Id.*)

The Group’s principal business activities are divided among two operating segments: (i) Terminals and Infrastructure and (ii) Ships. (*Id.* ¶ 12.) The Terminals and Infrastructure segment includes the entire production and delivery chain for LNG, spanning natural gas procurement and liquefaction to logistics, facilities, and conversion or development of natural gas-fired power generation. (*Id.*) The Group’s Ships segment charters the Group’s vessels under long-term or spot (short-term) arrangements with third parties in the LNG logistics industry. (*Id.*) In recent years, the Group has experienced financial headwinds brought on by an unfavorable pricing environment for LNG and significant capital expenditures for projects that have not come online within expected timeframes and budgets. (*Id.* ¶ 1.)

B. Corporate Structure

The Parent is a Delaware corporation with stock listed on the Nasdaq Global Select Market (“Nasdaq”). (Stephansen Decl. Ex. D ¶ 4.9.) Both Debtors are private companies limited by shares and incorporated under the laws of England and Wales. (VP

¶ 3.) The registered office of both NFE Global and NFE Brazil is Suite 1, 7th Floor, 50 Broadway, London SW1H 0BL, United Kingdom. (*Id.* ¶ 16.)

NFE Brazil was formed specifically for the purpose of promoting the restructuring of BrazilCo. (*Id.*) In furtherance of that purpose, NFE Brazil became a guarantor in respect of the obligations under the New 2029 Notes (as defined herein) on April 9, 2026. (*Id.*) The boards of both Debtors are comprised of four directors, one of whom is the Foreign Representative and a U.K. resident that does not sit on the board of any other Group entity. (*Id.*) In addition, the Debtors' books and records are maintained in the U.K., each Debtor maintains a bank account in the U.K., and Vistra Cossec Limited, a U.K. company, serves as the corporate secretary for both Debtors. (*Id.*)

C. Capital Structure

The Debtors have guaranteed external funded debt in a total outstanding principal amount of approximately \$5.7 billion. (Boas Decl. ¶ 9.) NFE Global is an obligor on intercompany obligations with a total outstanding principal amount of \$2.4 billion. (*Id.*) All of the below mentioned external funded debt and intercompany obligations (collectively, the "Plan Debt" and the holders of the debt, the "Plan Creditors") is in U.S. dollars and addressed by the Restructuring Plans, outlined below. (*Id.*) NFE Brazil is a guarantor on the New 2029 Notes (the "BrazilCo Plan Debt") and NFE Global is a guarantor on all other Plan Debt (the "CoreCo Plan Debt"). (*Id.*) The following table summarizes the Debtors' external funded debt:

Obligation	Principal Amount Outstanding	Collateral and Priority	Maturity Date
CoreCo Plan Debt			
2026 Legacy Notes	\$510,879,63	Common Collateral (<i>Pari passu</i> first lien claim)	September 30, 2026
2029 Legacy Notes	\$236,728,231	Common Collateral (<i>Pari passu</i> first lien claim)	March 15, 2029
R-1 Revolving Credit Facility	\$100,000,000	Common Collateral FLNG 1 Collateral FLNG 2 Collateral Account Collateral (<i>Pari passu</i> first lien claims) Brazil Collateral (<i>Pari passu</i> second lien claim)	April 15, 2026
R-2 Revolving Credit Facility	\$560,400,000	Common Collateral FLNG 1 Collateral FLNG 2 Collateral Account Collateral Brazil Collateral (<i>Pari passu</i> first lien claim) Brazil Collateral (<i>Pari passu</i> second lien claim)	October 15, 2027
Term Loan A	\$294,999,563	Common Collateral FLNG 2 Collateral Account Collateral Brazil Collateral (<i>Pari passu</i> first lien claim) Brazil Collateral (<i>Pari passu</i> second lien claim)	July 19, 2027
Term Loan B	\$1,266,077,800	Common Collateral FLNG 1 Collateral FLNG 2 Collateral Account Collateral (<i>Pari passu</i> first lien claim)	October 30, 2028
BrazilCo Plan Debt			
New 2029 Notes	\$2,730,126,770	Brazil Collateral (<i>Pari passu</i> first lien claim)	November 15, 2029
Total	\$5,699,211,827		

(Id.)

D. The Debtors' U.S. Assets

The Debtors have property in the U.S. in the form of a retainer (the "Retainer") held in an account maintained in New York by Skadden, Arps, Slate, Meagher & Flom

LLP (“Skadden”). (*Id.* ¶ 20.) Additionally, the Debtors are obligators on U.S. dollar-denominated debt that is governed by New York law, including the instruments related to the Legacy Notes, the Term Loan A Facility, the Term Loan B Facility, the Revolving Credit Facility, the Series I Intercompany Loan Facility, the Series II Intercompany Loan Facility, and the New 2029 Notes. (*Id.*)

E. Events Leading to the English Proceedings

1. Challenges Facing the Debtors’ Business

The Group’s liquidity position and ability to generate revenue from projects and customer contracts have been adversely impacted by permitting and construction delays and denials, the early termination of a FEMA contract in Puerto Rico, delays to certain scheduled power auctions in Brazil, fluctuations in natural gas feedstock, increases in cost of construction materials, swings in the shipping and freight markets, and environmental activist opposition. (VP ¶ 31.)

2. The 2024 Refinancing

On November 6, 2024, the Group entered into an exchange and subscription agreement with certain holders of its outstanding 2026 Legacy Notes and 2029 Legacy Notes, which related to a series of transactions intended to extend the maturity profile of the Group’s indebtedness and enhance liquidity. (*Id.* ¶ 33.) Pursuant to this agreement, NFE Financing (i) sold approximately \$1.21 billion in aggregate principal amount of New 2029 Notes and (ii) issued approximately \$1.52 billion in aggregate principal amount of New 2029 Notes in a dollar-for-dollar exchange for a portion of the Group’s 2026 Legacy Notes and 2029 Legacy Notes. (*Id.*) The collateral provided in connection with securing the New 2029 Notes consisted of NFE Financing’s interest in (i)

approximately 45% of the Group's Brazilian business; (ii) proceeds of NFE Financing's interest in the Series II Intercompany Loan Facility; (iii) the Brazilian Intercompany Loan Facility (which in turn is secured by the Brazilian Parent's approximately 55% equity interest in the Group's Brazil business and its interest in the proceeds of the Series I Intercompany Loan Facility); and (iv) land in Wyalusing, Pennsylvania owned by Bradford Partners, guarantor for the New 2029 Notes (the "PA Land"). (*Id.*) The Group utilized proceeds from the subscription transactions to redeem in full the outstanding aggregate principal amount of such notes. (*Id.*)

3. The Restructuring Support Agreement

In June and July 2025, the Group engaged restructuring professionals, including Skadden and Houlihan Lokey Capital, Inc., to explore possible restructuring transactions. (Boas Decl. ¶ 21.) In October 2025 the Group's advisors presented the Group's key creditors with the terms of a proposed restructuring that spun off the Group's Brazilian business. (*Id.*) After lengthy negotiations, on March 17, 2026, the Parent, NFE Global, certain other members of the Group, and members of an ad hoc group of New 2029 Noteholders, certain TLA Lenders, members of an ad hoc group of TLB Lenders, members of an ad hoc group of RCF Lenders, and members of an ad hoc group of 2026 Legacy Noteholders and 2029 Legacy Noteholders (collectively, the "RSA Parties") entered into the RSA which sets forth the terms of a restructuring of the groups principal funded debt obligations. (*Id.* ¶ 22.) The RSA was agreed to by 100% of the RCF lenders and TLA lenders and approximately 97% of the TLB lenders, 85% of the 2026 Legacy Noteholders, 87% of the 2029 Legacy Noteholders, and 99% of the new 2029 Noteholders. (*Id.*) NFE Brazil acceded to the RSA on April 9, 2026. (*Id.*) Pursuant to

the RSA, the RSA Parties have agreed to support the Restructuring Plans and forbear from exercising remedies while the RSA is in effect. (*Id.*)

F. The Restructuring Plans

The Restructuring will (i) reduce the Group's funded debt owed to creditors outside the Group from \$5.7 billion to less than \$1 billion, (ii) exchange existing debt obligations for a combination of new debt and preferred and common equity (the "Plan Consideration"), and (iii) separate the Group into two independent companies: one company comprising the Group's Brazilian operations and the PA Land ("BrazilCo"), which will be owned by certain of the Group's creditors, and another company comprising the Group's remaining operations ("CoreCo"), which will become 65% owned by the Group's creditors, while existing shareholders retain 35% (pre-dilution from the MIP and the convertible preferred equity being issued as Plan Consideration). (VP ¶ 2.) The Restructuring Plans will bind all Plan Creditors and release the obligations of the Group under the instruments governing the debt being restructured by the Restructuring Plans. (*Id.*)

The Debtors seek to effectuate the restructuring plan pursuant to Part 26A of the Companies Act. (Boas Decl. ¶ 24.) The key terms of the Restructuring Plans are described below:

Key Terms of the Restructuring Plans	
Overview	The Restructuring Plans will provide for the following: - The Group will separate into two independent companies: (i) New BrazilCo Parent and its direct and indirect subsidiaries (“BrazilCo Group”), and (ii) NFE and its direct and indirect subsidiaries other than BrazilCo Group (collectively, “CoreCo Group”). - Obligations under the 2026 Legacy Notes, 2029 Legacy Notes, Term Loan A Agreement, Term Loan B Agreement, Revolving Credit Facility Agreement, New 2029 Notes, and Intercompany Credit Agreements will be exchanged (in each case on a ratable basis), as applicable, for BrazilCo Common Equity, New CoreCo Term Loans, CoreCo Preferred Stock, CoreCo Common Stock, the FLNG 2 Term Loans, and/or the FLNG 2 Preferred Equity. - NFE, as borrower, and each other CoreCo Group entity, as a guarantor shall enter into a senior secured, first-priority term loan credit facility for CoreCo Group in accordance with the New CoreCo Credit Facility Term Sheet. All letters of credit issued under the existing Letter of Credit Facility or Revolving Credit Facility will be backstopped, rolled into, or replaced by letters of credit issued under separate new fully committed letter of credit facilities for each of CoreCo Group and BrazilCo Group (or, in the case of CoreCo Group, remain outstanding under an amended, amended and restated, or otherwise modified Letter of Credit Facility Agreement). - BrazilCo Group shall enter into one or more financing arrangements to provide liquidity for New BrazilCo on or prior to the date on which the conditions precedent to the Restructuring are satisfied or duly waived and the Restructuring has been fully implemented (the “Restructuring Effective Date”). Local Brazilian Debt Facilities shall, at the election of the Company Parties and with the consent of the majority of the ad hoc group of certain unaffiliated holders of New 2029 Notes represented by Paul Weiss, Rifkind, Wharton & Garrison LLP and Perella Weinberg Partners LP, be refinanced in full or remain outstanding on their existing terms (subject to the elimination of the NFE corporate guarantee and any other obligations tied to CoreCo). - Existing NFE Stockholders shall retain shares of NFE’s common stock representing 35 percent of the CoreCo Common Stock issued and outstanding as of the Restructuring Effective Date, immediately before giving effect to the CoreCo MIP or any conversion of the CoreCo Preferred Stock into CoreCo Common Stock.

Plan Consideration	Pursuant to the Restructuring Plans, the Plan Creditors will release their existing Plan Debt claims against the Group in return for Plan Consideration as set forth below.	
	Legacy Notes	CoreCo Common Stock CoreCo Preferred Stock
	New 2029 Notes	BrazilCo Common Equity
	Series I Intercompany Loan Facility	CoreCo Common Stock CoreCo Preferred Stock
	Series II Intercompany Loan Facility	CoreCo Common Stock CoreCo Preferred Stock
	R-1 Revolving Credit Facility	CoreCo Common Stock CoreCo Preferred Stock New CoreCo Term Loans FLNG 2 Term Loans FLNG 2 Preferred Equity
	R-2 Revolving Credit Facility	CoreCo Common Stock CoreCo Preferred Stock New CoreCo Term Loans FLNG 2 Term Loans FLNG 2 Preferred Equity RCF-2 / TLA BrazilCo Equity Pool
	Term Loan A	CoreCo Common Stock CoreCo Preferred Stock New CoreCo Term Loans FLNG 2 Term Loans FLNG 2 Preferred Equity RCF-2 / TLA BrazilCo Equity Pool
	Term Loan B	CoreCo Common Stock CoreCo Preferred Stock New CoreCo Term Loans FLNG 2 Term Loans FLNG 2 Preferred Equity
Certain Shareholder Approvals	The Company shall, in accordance with the Restructuring Milestones and the other provisions of the RSA, obtain the approval of holders of a majority of its existing common stock to, among such other matters as the Company and the Majority Supporting Creditors may determine advisable, (a) issue greater than 20% of its existing common stock, (b) amend its organizational documents to, among other things, authorize additional shares of common stock, (c) grant NFE's board of directors authority to effect a reverse stock split, and (d) approve the issuance of shares in respect of the CoreCo MIP, in each case, as required by applicable securities laws and exchange rules.	
Releases	The Restructuring Plans and the Transaction Implementation Deed provide for the Plan Releases. With effect on and from the Restructuring Effective Date, each "Plan Party" (defined as each of the Plan Companies, each Undertaking Party ⁶ and each Plan Creditor) irrevocably, unconditionally, fully and absolutely waives, releases and forever discharges (i) any and all actions, proceedings, claims, damages, counterclaims, complaints, liabilities, liens, rights, demands and set-offs against each Released Party, whether	

	present or future, prospective or contingent, of whatsoever nature and howsoever arising, whether in law or in equity, in contract (including, but not limited to, breaches or non-performance of contract), in statute or in tort (including, but not limited to, negligence and misrepresentation) or in any other manner whatsoever, breaches of statutory duty, for contribution, or for interest and/or costs and/or disbursements, whether or not for a fixed or unliquidated amount, whether filed or unfilled, whether asserted or unasserted, whether or not presently known to the parties or to the law, in each case, that it ever had, may have or hereafter can, shall or may have, arising out of actions, omissions or circumstances on or prior to the Restructuring Effective Date against each and any Released Party (as defined below) whatsoever or howsoever arising (and notwithstanding any subsequent facts or information becoming known following the Restructuring Effective Date), in relation to or arising directly or indirectly out of or in connection with (a) the negotiation, preparation, sanction or implementation of the Plans and/or the Restructuring or (b) the Plan Claims (including the negotiation, preparation, sanction, execution or implementation of any Implementation Documents); and (ii) all rights, title and interest it has in the Plan Claims, and all Liabilities owed by a Group Company to any Plan Party in relation to such Plan Claims. - Released parties (the “Released Parties” each individually a “Released Party”) include: (a) each of the Plan Companies and each member of the Group, and their respective direct and indirect subsidiaries from time to time; (b) the Plan Creditors party to or bound by the Plans and each Nominee (as applicable); (c) each Undertaking Party; (d) the Released Advisors,⁸ each Advisor Released Person,⁹ and any person acting on the instructions of the foregoing in connection with the Plans or the Restructuring; (e) each Affiliate of the persons listed in (a)-(d) above; and (f) each of the respective officers, directors, employees, partners, executives and agents of the persons listed in (a)- (e) above. - The Plan Releases are subject to customary carve-outs, including for: (i) the Excluded Liabilities (as defined below); (ii) rights arising under or in connection with the Implementation Documents; and (iii) claims which may arise or accrue in relation to acts, omissions or circumstances occurring after the Restructuring Effective Date. - Excluded liabilities (“Excluded Liabilities”) include liabilities: (i) arising from criminal acts, fraud, gross negligence or willful misconduct, as determined by a judgment issued by a court of competent jurisdiction; (ii) arising from a Released Advisor’s duty of care to its client; (iii) of accounting, restructuring, or tax advisors subject to reliance letters; (iv) of outstanding professional advisor fees and costs properly incurred in connection with the Restructuring; (v) created by the Implementation Documents, the Restructuring Plans, or ancillary documents; (vi) indemnity or reimbursement obligations owed by lenders to their respective agents under the relevant facility agreements; (vii) in the case of a Group Company, liabilities of directors or Group Advisors arising from
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	negligence, default, or breach of duty, or that would be available upon the insolvency of such Group Company; and (viii) of one Group Company to another Group Company that is expressly not released under the terms of the Separation Agreement or any other Implementation Document. - Each Plan Party also undertakes not to commence or continue any proceedings against any Released Party in respect of the released claims. Pursuant to the Restructuring Plans, NFE Global Holdings Limited shall, on behalf of itself and the CoreCo Plan Creditors, and NFE Brazil Newco Limited shall, on behalf of itself and the BrazilCo Plan Creditors, enter into the releases on the terms set out in the Transaction Implementation Deed.
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(*Id.* ¶ 23.)

G. The English Proceedings

On March 24, 2026 and April 10, 2026, respectively, NFE Global and NFE Brazil each formally commenced the English Proceedings. (VP ¶ 37.) On April 17, 2026, the board of directors of each of the Debtors adopted resolutions appointing Christopher Boas as the Foreign Representative. (*Id.* ¶ 47.) The convening hearing in respect of the Restructuring Plans (the “Convening Hearing”) was held on May 14, 2026. (*Id.*)

While certain creditors had previously threatened to object to the Restructuring Plan and make a disclosure application at the Convening Hearing, at the Convening Hearing they did not pursue either an objection or disclosure application. (*Id.* ¶ 41.) On May 14, 2026, the English Court made an order (the “Convening Order”), among other things, confirming the Foreign Representative’s appointment, convening meetings of Plan Creditors to consider approval of the Restructuring Plans (the “Plan Meetings”), and scheduling a hearing to consider sanctioning of the Restructuring Plans for June 18, 2026 (the “Sanction Hearing”). (*Id.* ¶ 3.) In accordance with the terms of the Convening Order, the Debtors made available to all Plan Creditors a notice of the Plan Meetings and

the Explanatory Statement on the Information Agent’s website, and notices of the same were distributed to Plan Creditors. (*Id.* ¶ 42.)

At the Sanction Hearing, the Debtors walked the English Court through the Plan Releases and the English Court considered whether they were appropriate. (Supp. Stephansen Decl. ¶ 10.) No Plan Creditor appeared to object to the Plan Releases or otherwise oppose sanction of the Restructuring Plans. (*Id.*) The English Court sanctioned the Restructuring Plans including the Plan Releases as proposed. (*Id.*)

H. The Relevant Alternative Report

The Foreign Representative filed the Relevant Alternative Report prepared by A and M outlining the projected recovery under the relevant alternative (the “RA”) to obtaining chapter 15 recognition in this Court. (RAR at 14.) A and M indicates that under the RA, CoreCo would file for chapter 11 whereas BrazilCo would not and that business units (“BUs”) are assumed to be sold via merger and acquisition transactions to maximize value. (*Id.*) A and M compared creditor recovery under the Restructuring Plans (RPs) against the RA, as outlined below:

Plan 1 CoreCo – RA vs. RP									
\$m	LCF	RCF1	RCF2	TLA	TLB	26s	29s	S1	S2
RA	85	57	342	102	687	68	32	157	231
RP	Excl.	91	561	184	1,109	137	65	320	471
Variance	Excl.	34	219	82	422	70	33	163	240
RA	57%	54%	57%	32%	50%	13%	13%	13%	13%
RP	Excl.	86%	94%	58%	81%	26%	26%	26%	26%
Variance	Excl.	32%	37%	26%	31%	13%	13%	13%	13%

Plan 2 BrazilCo – RA vs. RP	
\$m	New 29s
RA	593
RP	1,177
Variance	584
RA	18%
RP	35%
Variance	18%

(RAR at 16.) All Plan Creditors receive a better outcome under each Restructuring Plan compared to the RA. (*Id.*)

I. Plan Voting

The Debtors held Plan Meetings on June 15, 2026 and the Restructuring Plans were approved with nearly unanimous consent, with unanimous votes in favor obtained in six out of the seven classes. (Supp. Stephansen Decl. ¶ 8.) The remaining class received a near-unanimous 99.84% vote in favor. (*Id.*) Only one Plan Creditor (holding less than 0.1% of the total Plan Debt) voted against one of the Restructuring Plans. (*Id.*) The turnout in each class was very high (99% to 100% by value across all classes, save for a single class where the turnout was 89.69% by value). (*Id.*) See below:

Class	% turnout (by value)	% voting in favor (of those who cast a vote, by value)
CoreCo Plan		
R-1 Lenders	100%	100%
R-2 Lenders	99.89%	100%
TLB Lenders	99.89%	100%

TLA Lenders	100%	100%
Legacy Noteholders	89.69%	99.89%
Series I and II Lenders	100%	100%
BrazilCo Plan		
2029 New Noteholders	99.67%	100%

(*Id.*)

The Plan Creditors were afforded extensive notice of, and multiple opportunities to review, consider, and object to, the Restructuring Plans and the Plan Releases. (*Id.* ¶ 9.) In particular, Plan Creditors were entitled to be heard with respect to the Restructuring Plans at both the Convening Hearing and the Sanction Hearing. (*Id.*) Plan Creditors received formal notice of the Plan Releases through multiple documents and proceedings and were provided with contact information for the Information Agent and the Debtors’ advisors to direct any questions regarding the Restructuring Plans, including the Plan Releases. (*Id.* ¶ 10.) These materials and proceedings include the RSA, the Convening Hearing, the Explanatory Statement which serves a function comparable to that of a disclosure statement required under section 1125 of the Bankruptcy Code, the Plan Meetings, and the Sanction Hearing. (*Id.*) Further, the Restructuring is the result of a months-long, hard fought negotiation between the Debtors and the Plan Creditors, with creditors organizing into groups and retaining sophisticated advisors before ultimately accepting the terms of Plan Releases. (*Id.* ¶ 13.) The Foreign Representative characterizes the supporting creditors (the “Supporting Creditors”) subject to the Plan Releases as “sophisticated investors who have had ample notice and opportunity to

review and understand the terms of the Restructuring Plans, including the Plan Releases, and who have independently determined to support the Restructuring.” (*Id.* ¶ 15.)

II. LEGAL ARGUMENT

Recognition of the English Proceedings in these chapter 15 Cases is a condition precedent to the effectiveness of the Restructuring, and failure to obtain an order approving recognition is a termination event under the RSA. (VP ¶ 46.) The Foreign Representative commenced these chapter 15 cases to obtain recognition of the English Proceedings and to give full force and effect to the Sanction Order and the Restructuring Plans, including the Plan Releases. (*Id.* ¶ 49.) The Foreign Representative argues that the Debtors satisfy the requirements, outlined below.

A. The Debtors Meet the General Eligibility Requirements of Section 109(a) of the Bankruptcy Code

The Foreign Representative notes that the Debtors have an interest in funds deposited with Skadden as a retainer for services held in a client trust account in New York. (*Id.* ¶ 55.) Furthermore, the Debtors are obligors on U.S. dollar denominated debt, governed by New York law and containing New York law forum selection clauses. (*Id.*) The retainer and the New York law-governed indebtedness are independent bases for jurisdiction and satisfy the “property” requirement of section 109(a) of the Bankruptcy Code. (*Id.*)

B. The Requirements of Section 1517(a) of the Bankruptcy Code are Satisfied

1. The English Proceedings are foreign main proceedings or, in the alternative, foreign nonmain proceedings, within the meaning of Section 1502 of the Bankruptcy Code.

The Foreign Representative argues that the English Proceedings meet the definition of “foreign proceedings” because (i) the Debtors commenced the English

Proceedings pursuant to Part 26A of the Companies Act, (ii) the English Proceedings are being overseen by the English Court in England and are being conducted pursuant to laws relating to insolvency or the adjustment of debts, (iii) the English Proceedings are collective in nature as they take into account the rights of all Plan Creditors, and (iv) the English Proceedings will facilitate the Restructuring of the Debtors as the implementation of the Restructuring Plans will address the Group's liquidity and operational challenges, while providing runway for the Group's portfolio of development projects and opportunities that are expected to generate significant revenue and liquidity in the future. (Boas Decl. ¶ 29.)

The Foreign Representative argues that because the Debtors' registered office is in England, there is a presumption that England is the COMI for the Debtors. Additional factors supporting the COMI analysis include: the Debtors are private companies limited by shares incorporated under the laws of England and Wales; the Debtors' books and records are maintained in England; each Debtor maintains bank accounts in England; a U.K. company (Vistra Cossec Limited) serves as the corporate secretary for both Debtors; and the Foreign Representative is an English citizen and resident and serves as a director of both Debtors. (*Id.* ¶ 31.)

Creditor expectation is also considered when making a COMI determination. (*Id.* ¶ 32.) The Debtors' COMI in England has been consistently ascertainable to third parties, and Plan creditors have supported the Restructuring Plans with 97% of the holders of the groups funded debt signing the RSA. (*Id.*) The Plan Creditors were aware they were entering into a restructuring with U.K. incorporated Debtors that would propose the restructuring plans in England, and that English law governed several key

agreements. (*Id.* ¶¶ 33-34.) The English Court held a Convening hearing and Sanction Hearing and has exclusive jurisdiction to hear and determine any proceeding and to settle any dispute in connection with the Restructuring Plans. (*Id.* ¶ 38.)

The Debtors engaged a U.K. based information agent located in London named Kroll Issuer Services Limited to serve as the information agent for the English Proceedings (the “Information Agent”). (*Id.* ¶ 40.) The Information Agent is responsible for communicating with plan creditors, distributing restructuring documentation, and fielding queries from plan creditors.

The Foreign Representative argues that because Recognition is a condition precedent to the effectiveness of the RSA, failure to recognize the English Proceedings would (i) jeopardize the overall transaction contemplated by the RSA (ii) lead to an alternative that destroys value (iii) upset creditor expectations and (iv) undermine these highly consensual restructuring transactions designed to de lever the group and facilitate corporate renewal. (*Id.* ¶ 41.)

The Foreign Representative argues in the alternative that the English Proceedings are considered foreign nonmain proceedings. (*Id.* ¶ 42.)

2. The Chapter 15 Cases were commenced by a duly authorized foreign representative

The Foreign Representative in this case is an individual who has been duly appointed by each of the Debtors’ governing bodies to act as the foreign representative on behalf of the Debtors in connection with the English Proceedings and, pursuant to the Convening Order, the Foreign Representative was recognized as such by the English Court. (VP ¶ 90.) Accordingly, the Foreign Representative argues that he is a “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code. (*Id.*)

C. Enforcement of the Restructuring Plans, Including the Plan Releases, and the Sanction Order is Proper

The Foreign Representative argues that recognition of the English Proceedings, enforcement of the Restructuring Plans (including the Plan Releases) and Sanction Order, and the issuance of an injunction enforcing the terms thereof in the United States is necessary to ensure that the Restructuring Plans, which have the support of the vast majority of the Plan Creditors, can be implemented without disruption or adverse actions being brought within this Court's jurisdiction. (Boas Decl. ¶ 47.) Otherwise, certain Plan Creditors could thwart the purpose of the Restructuring by commencing action in the United States for issues that have already been litigated. (*Id.* ¶ 48.)

The Foreign Representative states that the implementation of the Restructuring Plans will result in the Plan Creditors receiving the Plan Consideration, which is preferable to liquidation because liquidation would likely result in a substantially lower return to Plan Creditors as compared to the Plan Consideration. (*Id.* ¶ 49.) The Restructuring Plans will result in the same compromise or arrangement between the Debtors and each Plan Creditor as other similarly situated Plan Creditors. (*Id.*)

As to the Plan Releases, the Foreign Representative argues that they are more narrowly tailored than releases approved in other chapter 15 cases. (*Id.* ¶ 51.) The Plan Releases comprise only (i) an exculpation of acts taken in connection with the negotiation, preparation, sanction or implementation of the Restructuring Plans and/or the Restructuring and (ii) releases of Group entities and related parties from claims arising from or related to the Plan Debt. (*Id.*) Such releases are also subject to customary carve-outs, including for: (i) the Excluded Liabilities; (ii) rights arising under the Implementation Documents; and (iii) claims which may arise or accrue in relation to acts,

omissions or circumstances occurring after the Restructuring Effective Date. (*Id.*) The Foreign Representative argues the Plan Releases are “necessary and fundamental” to the Restructuring Plans because they provide a mechanism for the Plan Creditors to release their claims against the Parent, the Debtors, and the other Released Parties in exchange for the Plan Creditors receiving their Plan Consideration. (*Id.* ¶ 52.)

III. LEGAL STANDARD: FOREIGN PROCEEDING RECOGNITION

A. Eligibility to File under Chapter 15

“Foreign debtors seeking relief under chapter 15 must satisfy the debtor eligibility requirements set forth in section 109(a) of the Bankruptcy Code.” *In re Servicios de Petroleo Constellation S.A.*, 600 B.R. 237, 268 (Bankr. S.D.N.Y. 2019). 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). Where a foreign debtor does not have a place of business in the United States, the question often arises whether the foreign debtor has “property in the United States” as a condition precedent to eligibility under section 1517. *See In re Cell C Proprietary Ltd.*, 571 B.R. 542, 550–52 (Bankr. S.D.N.Y. July 27, 2017). 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 this Court explained in *In re U.S. Steel Canada Inc.*, 571 B.R. 600 (Bankr. S.D.N.Y. July 31, 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 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)).

Further, “[c]ontracts create property rights for the parties to the contract. A debtor’s contract rights are intangible property of the debtor.” *Berau Capital*, 540 B.R. at 83 (citing *U.S. Bank N.A. v. Am. Airlines, Inc.*, 485 B.R. 279, 295 (Bankr. S.D.N.Y. 2013), *aff’d*, 730 F.3d 88 (2d Cir. 2013)). Those property rights can be and typically are tied to the location of the governing law of the contract. *See id.* at 84 (holding that the situs of intangible property rights governed by New York law was New York). Accordingly, debt subject to a New York governing law clause and a New York forum selection clause constitutes property in the United States. *See In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (“[D]ollar-denominated debt subject to New York governing law and a New York forum selection clause is independently sufficient to form the basis for jurisdiction.”) (citation omitted); *Berau Capital*, 540 B.R. at 84 (“The Court concludes that the presence of the New York choice of law and forum selection clauses in the Berau indenture satisfies the section 109(a) ‘property in the United States’ eligibility requirement.”) (footnote omitted).

Id. at 610; *see also Servicios de Petroleo Constellation S.A.*, 600 B.R. at 269 (“This Court has previously held that a debtor’s contract rights, including rights pursuant to debt that is governed by New York law and contains a forum-selection clause, constitute intangible property of the debtor in New York for purposes of section 109(a).”); *Berau Capital*, 540 B.R. at 84 (“The Court concludes that the presence of the New York choice of law and forum-selection clauses in the *Berau* indenture satisfies the section 109(a) ‘property in the United States’ eligibility requirement.”); *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 Paper I Partners, L.P.*, 283 B.R. 661, 674 (Bankr. S.D.N.Y. 2002) (finding that debtors’ maintenance of original business documents in the United States constituted “property in the United States” under section 109); *Wallach v. Nowak (In re*

Sherlock Homes of W.N.Y., Inc.), 246 B.R. 19, 23-24 (Bankr. W.D.N.Y. 2000) (stating that listing contracts between the debtor/broker dealer and prospective sellers bestowed contractual rights upon the parties and the contract rights were assets of the debtor); *Slater v. Town of Albion (In re Albion Disposal, Inc.)*, 217 B.R. 394, 407-08 (W.D.N.Y. 1997) (noting that “it is well-established . . . that a debtor’s contractual rights—including rights arising under post-petition contracts—are included in the property of the estate”).

B. Proper Venue for Chapter 15

28 U.S.C. § 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 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. 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.”

Suntech Power Holdings, 520 B.R. at 414.

C. Recognition of a Foreign Proceeding under Section 1517

In seeking recognition of a foreign proceeding under 11 U.S.C. § 1517, a party must make a showing that:

- (1) The foreign proceeding constitutes a foreign proceeding (either main or nonmain) as are 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)(2)-(3).

1. 1517(a)(1): Foreign Main Proceeding Recognition

Section 1517(a) 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).

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 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.

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)); *see also In re Overnight & Control Com'n of Avánzit, S.A.*, 385 B.R. 525, 532–36 (Bankr. S.D.N.Y. 2008) (discussing factors).

b. Center of Main Interest (“COMI”)

While not defined by the Bankruptcy Code, the Code does presume “the debtor’s registered office . . . to be the [debtor’s COMI].” *Id.* § 1516(c); *see also In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 130 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008). The presumption can be overcome when making this determination. *See, e.g., id.* (stating that “the COMI presumption may be overcome particularly in the case of a ‘letterbox’ company not carrying out any business” in the country where its registered office is located) (internal citation omitted). A debtor’s COMI is determined based on the location of the debtor at the time of *filing* of the chapter 15 petition, not the historic operational activity of the debtor. *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137 (2d Cir. 2013).

In order to determine if the registered office presumption has been overcome, courts within this district have applied a list of non-exclusive factors (the “*SPhinX* factors”) to determine a debtor’s COMI. Those factors are: (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 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. *In re Fairfield Sentry Ltd.*, 714 F.3d at 137

(citing *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006)). The Court in *SPhinX*, however, was clear to say that the factors should not be applied “mechanically”: rather, “they should be viewed 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.” *SphinX*, 351 B.R. at 117.

When determining the “location of those who actually manage the debtor,” courts consider more than the location of the board of directors of the debtor in isolation, and their analysis of the location of management is somewhat flexible to reflect the realities of the management of a particular business. For example,

The headquarters of a corporate entity is more than the location of its board of directors. The term headquarters, or head office, contemplates the place where the primary management of an entity’s business is undertaken. Management of a corporate entity includes all relevant business functions, such as the financial, administrative, marketing, information technology, investment, and legal functions. Other functions may be relevant depending on the nature of the debtor’s business. Here, because [the debtor] operated as an insurance company, actuarial tasks, underwriting, and claims adjustment should be considered.

In re British Am. Ins. Co. Ltd., 425 B.R. 884, 911 (Bankr. S.D. Fla. 2010).

In addition to these factors, courts can also examine what the reasonable expectation of third parties and creditors, and whether there is any “objective evidence that could provide interested parties with notice that a debtor’s COMI was in a particular jurisdiction other than the place of its registered office.” *In re Olinda Star Ltd.*, 614 B.R. 28, 44 (Bankr. S.D.N.Y. 2020) (citing *Servicos de Petroleo Constellation*, 600 B.R. at 274). While creditor support can also be considered, it “only goes so far . . . the bankruptcy court still has the duty to make its own COMI determination.” *In re Sunac China Holdings Ltd.*, 656 B.R. 715, 733 (Bankr. S.D.N.Y. 2024); see also *In re Suntech*

Power Holdings Co., Ltd., 520 B.R. 399, 420 (Bankr. S.D.N.Y. 2014) (finding a COMI despite creditor objections).

2. Foreign Nonmain Proceeding

If the requirements for a foreign main proceeding are not met, a foreign proceeding can still be recognized as a nonmain proceeding if the debtor has an “establishment” in the country, defined as “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502. This requires a showing that the location constitutes “a seat for local business activity of the debtor . . . more than mere incorporation and record-keeping and more than just the maintenance of property.” *In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016) (quoting *In re Bear Stearns*, 374 B.R. at 131).

3. 1517(a)(2): Foreign Representative Recognition

The term “foreign representative” is defined in section 101(24) of the Bankruptcy Code as follows:

[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).

4. 1517(a)(3): Section 1515 Requirements

Per the Bankruptcy Code, an order of recognition shall be entered if the foreign representative meets the requirements of section 1515 in applying for recognition. 11 U.S.C. § 1517(a)(2)–(3). The requirements provided by section 1515 include presentation of:

- (1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;
- (2) a certificate from the foreign court affirming the existence of the proceeding and appointment of the representative; or
- (3) in the absence of (1) or (2), evidence which the court deems sufficient to confirm the existence of the foreign proceeding and appointment of the foreign representative.

Id. § 1515(b). The petition must also be accompanied by a statement identifying all known foreign proceedings with respect to the debtor, *id.* § 1515(c), and if applicable, a translation of the evidentiary materials into English, *id.* § 1515(d). The Court is entitled to presume the authenticity of such documents filed in connection with a chapter 15 petition. *Id.* § 1516(b).

D. Automatic Relief Under Section 1520

Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign main proceeding, including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtor and its property located within the territorial jurisdiction of the United States. *See* 11 U.S.C. § 1520(a).

E. Application of Section 1521 Stay to Debtor and Non-Debtors

There is not a reciprocal automatic stay placed on non-debtors in interest. Courts may grant relief under section 1521 of the Bankruptcy Code, which allows a court to grant a foreign representative “any appropriate relief” where necessary to effectuate the purpose of chapter 15 and to protect the debtor’s assets or creditors’ interests. 11 U.S.C. § 1521. This includes section 1521(a)(7), which allows a court to “grant[] 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).” *Id.* Courts have in turn utilized section 105(a) of

the Bankruptcy Code, which allows for the court to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [title 11],” 11 U.S.C. § 105(a), to apply the stay to third parties when “a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate.” *Queenie, Ltd. v. Nygard Int’l*, 321 F.3d 282, 287 (2d Cir. 2003).

F. Section 1522(a) May Limit Relief Available Under Section 1521

In granting relief under section 1521, the court must also adhere to section 1522(a), which permits the Court to grant relief only if the interests of creditors 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.’” *In re Odebrecht Engenharia e Construcao S.A. - Em Recuperacao Jud.*, 669 B.R. 457, 474 (Bankr. S.D.N.Y. 2025) (citing *In re Atlas Shipping A/S*, 404 B.R. 726, 741 (Bankr. S.D.N.Y. 2009)); *see also In re Asbestos Corp. Ltd.*, 674 B.R. 855, 874–76 (Bankr. S.D.N.Y. 2025).

Section 1522(a) is particularly relevant in cases in which a foreign sanctioned plan allegedly discriminates as to some creditors. For example, in *In re Mega Newco Ltd.*, No. 24-1203 (MEW), 2025 WL 601463, * 1 (Bankr. S.D.N.Y. Feb. 24, 2025), in concluding that the U.K. Scheme of Arrangement that modified the New York law-governed debt of the newly-created English affiliate of a Mexican company should be recognized and enforced in a chapter 15 case, my colleague, Judge Michael Wiles explained:

Clearly, the structure before me could be used in another case 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.

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 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 best 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.

Judge Wiles echoed what I had explained earlier in Transcript of Hearing at 21–22 of 25, *In re Codere Fin. 2 (UK) Ltd.*, (No. 20-12151 (MG), ECF Doc. # 13), (Bankr. S.D.N.Y. Oct. 9, 2020), in recognizing and enforcing a U.K. Scheme of Arrangement for a Spanish gaming company that created a new English affiliate to promote the scheme:

In order to obtain relief under Section 1521(a), and as in prior opinions of mine, recognizing and enforcing a scheme of arrangement is quite common under 1521(a) and 1507. But such relief can only be granted "only if the

interests of creditors and other interested entities, including the debtor, are sufficiently protected.” That’s the test set out in Section 1522(a).

On the record here I conclude that the requirement of 1522(a) has been satisfied, and for that reason and the others that I’ve described I’m going to go ahead and approve recognition of this as a foreign main proceeding and approve the recognition enforcement of the English scheme of arrangement.

I made clear on the record . . . I’ve only done this in light of what I’ve described as the lack of objections and overwhelming support, . . . that the interest of creditors and other interested entities are sufficiently protected here. If faced with another case where an entity newly created in the U.K. solely for the purposes of accomplishing a scheme of arrangement, I would view it as essential to review all of the other factors that I’ve considered here.

I’ve already addressed the issue about . . . the presumption is that the COMI of this entity is in the U.K., but Collier certainly raises the question whether the Court should look at how a group of companies is managed in order to determine the COMI. That’s at 1 Collier, paragraph 13.04.

And so, while the presumption may be established that the COMI of this entity is in the U.K., it doesn’t necessarily automatically follow that that should be recognized as the COMI, and I would only note that if the COMI of this entity wasn’t in the U.K. I don’t think the Court could determine that it—that the U.K. proceeding is a non-main proceeding.

Section 1522(a) has also been applied to bar relief where a foreign plan expressly conflicts with relief under the Bankruptcy Code. In *Jaffe v. Samsung Electronics Co.*, 737 F.3d 14 (4th Cir. 2013), the court addressed a German court-approved plan, consistent with applicable German law, which terminated a patent license granted by the German debtor for a U.S. patent to a U.S. licensee. The German debtor then sought recognition and enforcement of the German plan in the U.S., including the patent license termination, in a chapter 15 case. *Id.* at 19-20. The Fourth Circuit invalidated the license termination, applying sections 1522(a) and 365(n) of the Code. *Id.* at 31. Section 365(n)(1)(B) provides that if a debtor terminates an executory contract that licenses intellectual property, the licensee retains the right to enforce the license (subject to certain

limitations). The court held that U.S. licensee was not sufficiently protected under section 1522(a). *Id.* at 30. “The bankruptcy court, however, may only grant discretionary relief under § 1521 if it determines that ‘the interest of the creditors and other interested entities, including the debtor, are sufficiently protected.’” *Id.* at 24

The point here is that a chapter 15 court, before enforcing provisions of a foreign plan, must carefully scrutinize the plan, and determine whether any foreign plan provisions conflict with applicable provisions of U.S. or state law. As already stated, no objections were raised in this case, and the Court’s scrutiny of the Plans has not found any provisions of the Restructuring Plans that appear problematic.

G. Section 1506 Requirements

Any relief that is appropriate under sections 1507, 1517, 1520, or 1521 still must not run afoul of section 1506. Section 1506 precludes any relief requested under the provisions in chapter 15 that is “manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. *See, e.g., In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (stating that the public policy exception embodied in section 1506 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”) (citing H.R.Rep. No. 109–31(I), at 109, *reprinted in* 2005 U.S.C.C.A.N. 88, 172) (grammatical changes omitted). The public policy exception should only be invoked “under exceptional circumstances concerning matters of fundamental importance for the United States.” *In re Black Gold S.A.R.L.*, 635 B.R. 517, 528 (B.A.P. 9th Cir. 2022) (collecting cases). In evaluating this “narrow” exception, courts consider whether the foreign

“insolvency laws or procedural protections for creditors” are “repugnant” to U.S. law, not the “misconduct or bad faith” of petitioners. *Id.* at 530.

Congress provided courts additional instructions when interpreting the phrase “manifestly” in the context of section 1506, noting “[t]he word ‘manifestly’ in international usage restricts the public policy exception to the most fundamental policies of the United States,” which is the standard meaning ascribed to the term “manifestly” in international law when describing a nation’s public policy. H.R.Rep. No. 109–31(I), at 109, *as reprinted in* 2005 U.S.C.C.A.N. 88, 172; *Ephedra Prods. Liab. Litig.*, 349 B.R. at 336. Moreover, the official Guide to the Enactment of the Model Law on Cross–Border Insolvency expressly states that

[t]he purpose of the expression “manifestly,” used also in many other international legal texts as a qualifier of the expression “public policy,” is to emphasize that public policy exceptions should be interpreted restrictively and that article 6 is only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State.

GUIDE TO ENACTMENT OF THE UNCITRAL MODEL LAW ON CROSS–BORDER

INSOLVENCY, ¶ 89, U.N. Doc A/CN.9/442 (1997). The House Judiciary Committee noted that the Guide “should be consulted for guidance as to the meaning and purpose of chapter 15’s provisions.” H.R.Rep. No. 109–31(I), at 106 n. 101, *as reprinted in* 2005 U.S.C.C.A.N. 169 n. 101; *see also Ephedra Prods. Liab. Litig.*, 349 B.R. at 336.

In order to determine if foreign proceedings are “manifestly contrary to the public policy of the United States,” federal courts have considered whether a foreign proceeding lacked certain common elements of American practice. *In re ARD Fin., S.A.*, No. 25-12794 (MG), 2026 WL 817458, at *17 (Bankr. S.D.N.Y. Mar. 25, 2026). “As Judge Rakoff noted in *Ephedra.*, as early as 1895, the Supreme Court held that a foreign

judgment should generally be accorded comity if ‘its proceedings are according to the course of a civilized jurisprudence,’ *i.e.*, fair and impartial.” *Id.* at 336 (quoting *Hilton v. Guyot*, 159 U.S. 113, 205-06 (1895)); *see also In re Asbestos Corp. Ltd.*, 2025 WL 3023332, at *7. The Second Circuit reaffirmed this approach in *Ackermann v. Levine*, 788 F.2d 830 (2d Cir. 1986), noting the “narrowness of the public policy exception to enforcement . . . of foreign judgments,” adding that, “[a]s Judge Cardozo so lucidly observed: ‘We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.’” *Ackermann*, 788 F.2d at 842 (quoting *Loucks v. Standard Oil Co. of New York*, 224 N.Y. 99, 111 (1918)).

IV. LEGAL STANDARD: PLAN RECOGNITION

A. Relief Under Sections 1521 & 1507 of the Code

Courts in this district have previously noted that chapter 15 of the Bankruptcy Code adopted the substance and most of the text of the United Nations Commission on International Trade Law (“*UNCITRAL*”) Model Law on Cross-Border Insolvency and provides a framework for recognizing and giving effect to foreign insolvency proceedings. *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d at 132; *In re Rede Energia S.A.*, 515 B.R. 69, 89–90 (Bankr. S.D.N.Y. 2014). A central tenet of chapter 15 is the importance of comity in cross-border insolvency proceedings. *In re Cozumel Caribe S.A. de C.V.*, 482 B.R. 96, 114–15 (Bankr.S.D.N.Y.2012). If a foreign case is recognized as a foreign main proceeding, as it was here, certain relief automatically goes into effect pursuant to section 1520, and, under section 1521, a bankruptcy court may grant “any appropriate relief” in order to “effectuate the purpose of

this chapter [15] and to protect the assets of the debtor or the interests of the creditors.”

11 U.S.C. § 1521(a).

Relief under section 1521(a) is discretionary. “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,” provided that the interests of creditors and other interested entities are sufficiently protected. *In re Olinda Star Ltd.*, 614 B.R. at 46 (quoting *In re Atlas Shipping A/S*, 404 B.R. at 740). This Court has held that “sufficient protection” is embodied by 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.” *In re Olinda Star Ltd.*, 614 B.R. at 46 (quoting *In re Atlas Shipping A/S*, 404 B.R. at 740).

The Court may also grant relief under section 1507(a) of the Code in addition to the types of relief enumerated in section 1521. Section 1507 authorizes the Court to grant any “additional assistance” available under the Bankruptcy Code or under “other laws of the United States,” provided that such assistance is consistent with the principles of comity and satisfies the fairness considerations set forth in section 1507(b). *In re Toft*, 453 B.R. 186, 190 (Bankr. S.D.N.Y. 2011). *See also In re Agrokor d.d.*, 591 B.R. 163, 188–89 (Bankr. S.D.N.Y. 2018) (holding that relief under section 1507 may only be granted when “such assistance is consistent with the principles of comity and satisfies the fairness considerations set forth in section 1507(b)”) (quoting *In re Rede Energia S.A.*, 515 B.R. at 90).

Additionally, this Court has repeatedly noted that “[t]he interplay between the relief available under sections 1507 and 1521 is far from clear.” *In re Avanti Comm’n Grp. PLC*, 582 B.R. 603, 615–16 (Bankr. S.D.N.Y. 2018). The Fifth Circuit in *Ad Hoc Grp. of Vitro Noteholders v. Vitro SAB De CV (In re Vitro S.A.B. de CV)*, 701 F.3d 1031, 1054 (5th Cir. 2012), instructed courts to

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 . . . § 1521’s grant of any appropriate relief . . . [which is] 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.

701 F.3d at 1054.

B. Third Party Releases and Exculpations in Chapter 15

1. Third-Party Releases of Affiliate Non-Debtor Guaranties in Chapter 15 Cases Are Enforceable

It is commonplace for Part 26 schemes and Part 26 plans to include releases of affiliate guarantees of the debt that is being restructured. For any creditors that have voted in favor of the plan, the releases are wholly consensual. But for creditors who have voted against the approved plan or who have not voted, the releases are nevertheless effective. If so-called ‘ricochet’ claims against affiliate guarantors remained possible, the schemes or plans would fail. *See, e.g., In re Avanti Comm’n Group PLC*, 682 B.R. at 615–19; *see also 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 (Bankr. S.D.N.Y. Mar. 27, 2015) (ECF Doc. # 16); *In re New World Res. N.V.*, Case No. 14–12226–SMB (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 plan containing third-party releases); *In re Magyar Telecom B.V.*, Case No. 13-13508-SHL, 2013 WL 10399944 (Bankr. S.D.N.Y. Dec. 11, 2013) (ECF Doc. # 26); *In re Metcalfe & Mansfield Alt. Inv.*, 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.”)

2. Exculpation Provisions in Chapter 15 Cases Are Enforceable

“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 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)). Most of the law in this district regarding exculpation clauses has developed in chapter 11 cases but is equally applicable in chapter 15 cases where the issue is whether to enforce exculpation provisions included in plans sanctioned by foreign courts. The plans sanctioned in this case by the U.K. court include exculpation provisions which carve-out from protection acts involving fraud or gross negligence.

“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 misconduct or gross negligence.” *In re LATAM Airlines Grp. S.A.*, No. 20-11254 (JLG), 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.” *Id.* 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 WL 2767121, at *13 (Bankr. S.D.N.Y. May 29, 2024) (cleaned up). 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 KG Winddown, LLC*, Case No. 20-11723 (MG) (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) (Bankr. S.D.N.Y. July 2, 2014) (ECF Doc. # 322) (approving exculpation provision in plan providing exculpation for non-estate fiduciaries); *In re Residential Cap.*

LLC, Case No. 12-12020 (MG), 2013 WL 12161584, at *13 (Bankr. S.D.N.Y. Dec. 11, 2013) (order confirming plan that 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”)

“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 fiduciaries and non- estate fiduciaries.” *In re: Klaynberg*, No. 22-10165 (MG), 2023 WL 5426748, at *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.”).

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 WL 3716398, at *9 (Bankr. S.D.N.Y. Aug. 20, 2021); *In re Aegean Marine Petroleum Network Inc.*, 599 B.R. at 721 (“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 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.”).

V. DISCUSSION: FOREIGN PROCEEDING RECOGNITION

A. Eligibility Under Section 109(a) of the Code

Courts have consistently held that section 109(a) is a low bar for chapter 15 eligibility and a retainer held in a client trust fund is sufficient to establish eligibility. *In re B.C.I. Finances Pty Ltd.*, 671 B.R. 669, 676 (Bankr. S.D.N.Y. 2025); *see also In re Iovate Health Scis. Int’ Inc.*, 673 B.R. 516, 526-27 (Bankr. S.D.N.Y. 2025); *ARD Fin., S.A.*, 2026 WL 817458, at *18. The Debtors must have an interest in the funds to qualify under section 109(a), but “[i]t is not relevant who paid the retainer, so long as the retainer is meant to cover the fees of the attorneys for all the Debtors.” *Glob. Ocean Carriers*

Ltd., 251 B.R. at 39; *see also In re JPA No. 111 Co., Ltd.*, No. 21-12075 (DSJ), 2022 WL 298428, at *6 (Bankr. S.D.N.Y. Feb. 1, 2022).

The Debtors have property in the United States in the form of a Retainer held in an account maintained in New York by Skadden. (Boac Decl. ¶ 20.) Additionally, the Debtors are obligators on U.S. dollar-denominated debt that is governed by New York law, including the instruments related to the Legacy Notes, the Term Loan A Facility, the Term Loan B Facility, the Revolving Credit Facility, the Series I Intercompany Loan Facility, the Series II Intercompany Loan Facility, and the New 2029 Notes. (*Id.*) These satisfy the “property in the United States” requirement for eligibility under section 109(a). *See In re Avanti Comm’n Grp. PLC*, 582 B.R. at 619 (holding that a foreign debtor was eligible to be a debtor under section 109(a) of the Bankruptcy Code because of (a) an interest in the U.S. counsel’s retainer account and (b) an instrument government by New York law). Accordingly, section 109(a) of the Code is satisfied.

B. The English Proceedings are Foreign Main Proceedings

1. The English Proceedings are “Foreign Main Proceedings” under section 1517(a)(1)

The Foreign Representative has sufficiently demonstrated that the English Proceedings are “foreign main proceedings” within the meaning of section 1517 of the Code. Section 1517 provides that “(1) such foreign proceeding . . . 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.” 11 U.S.C. § 1517(a).

Section 101(23) of the Code defines “foreign proceeding” as follows:

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).

The Foreign Representative contends that the English Proceedings meet this criteria because (i) the Debtors commenced the English Proceedings pursuant to Part 26A of the Companies Act, (ii) the English Proceedings are being overseen by the English Court in England and are being conducted pursuant to laws relating to insolvency or the adjustment of debts, (iii) the English Proceedings are collective in nature as they take into account the rights of all Plan Creditors, and (iv) the English Proceedings will facilitate the Restructuring of the Debtors as the implementation of the Restructuring Plans will address the Group's liquidity and operational challenges, while providing runway for the Group's portfolio of development projects and opportunities that are expected to generate significant revenue and liquidity in the future. (Boas Decl. ¶ 29.) Accordingly, the English Proceedings qualify as "foreign proceedings."

2. The Debtors' COMI is England

The Debtors' COMI is located in England. Both Debtors are private companies limited by shares and incorporated under the laws of England and Wales. (VP ¶ 3.) Both NFE Global and NFE Brazil have their registered office at Suite 1, 7th Floor, 50 Broadway, London SW1H 0BL, United Kingdom. (*Id.* ¶ 16.) The Foreign Representative has demonstrated that each of the Debtors has a registered office located in England and each is entitled to the presumption under section 1516(c) that the location of their registered office is also its center of main interest.

There appears to be nothing in the record to refute the COMI presumption. Additional supporting factors include that the Debtors' books and records are maintained

in England; each Debtor maintains bank accounts in England; a U.K. company (Vistra Cossec Limited) serves as the corporate secretary for both Debtors; and the Foreign Representative is an English citizen and resident and serves as a director of both Debtors. (Boas Decl. ¶ 31.)

Therefore, the Debtors' COMI is in England, and the Court recognized the English Proceedings as "foreign main proceedings" pursuant to section 1502(4) and 1517(b)(1) of the Code.

C. The Public Policy Exception Does Not Bar Recognition

The English Proceedings are not fundamentally contrary to U.S. public policy. Succeeding on a public policy argument in an attempt to deny recognition is a high bar. Courts have noted that "even the absence of certain procedural or constitutional rights will not itself be a bar under [Section] 1506." *In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 871 (Bankr. S.D.N.Y. 2021) (quoting *In re OAS S.A.*, 533 B.R. 83, 104 (Bankr. S.D.N.Y. 2015)).

On April 17, 2026, the board of directors of each of the Debtors adopted resolutions appointing Christopher Boas as the Foreign Representative. (VP ¶ 47.) The Convening Hearing was held on May 14, 2026. (*Id.*) While certain creditors had previously threatened to object to the Restructuring Plan and make a disclosure application at the Convening Hearing, at the Convening Hearing they did not pursue either an objection or disclosure application. (*Id.* ¶ 41.) On May 14, 2026, the English Court made the "Convening Order, among other things, confirming the Foreign Representative's appointment and convening the Plan Meetings. (*Id.* ¶ 3.) In accordance with the terms of the Convening Order, the Debtors made available to all Plan

Creditors a notice of the Plan Meetings and the Explanatory Statement on the Information Agent's website, and notices of the same were distributed to Plan Creditors. (*Id.* ¶ 42.)

Additionally, the RSA was agreed to after lengthy negotiations by 100% of the RCF lenders and TLA lenders and approximately 97% of the TLB lenders, 85% of the 2026 Legacy Noteholders, 87% of the 2029 Legacy Noteholders, and 99% of the new 2029 Noteholders. (Boas Decl. ¶ 22.)

In light of the lack of objections, opportunity for creditors to be heard, notice process, and overwhelming creditor support after a lengthy negotiation process, the English Proceedings provided for a fundamentally fair process that accords with due process standards in the United States.

D. The Debtors Have Satisfied the Additional Requirements of Section 1517 and Rule 1007

The Debtors have satisfied section 1517(a) of the Code, which requires the foreign representative that seeks recognition to be a "person or body." *See* 11 U.S.C. § 1517(a)(2). The foreign representative is a "person" as defined by section 101(41) of the Code.

On April 17, 2026, the board of directors of each of the Debtors adopted resolutions appointing Christopher Boas as the Foreign Representative. (VP ¶ 47.) On May 14, 2026, the English Court made the Convening Order, among other things, confirming the Foreign Representative's appointment. (*Id.* ¶ 3.)

As such, the Foreign Representative in this case is an individual who has been (1) duly appointed by each of the Debtors' governing bodies to act as the foreign representative on behalf of the Debtors in connection with the English Proceedings and, (2) pursuant to the Convening Order, the Foreign Representative was recognized as such

by the English Court. (*Id.* ¶ 90.) Accordingly, Christopher Boas is a “foreign representative” as defined under the Bankruptcy Code.

E. The Court Need Not Consider Recognition as a Foreign Nonmain Proceeding

Because the Court has concluded that the COMI of each chapter 15 Debtor is England and therefore that the English Proceeding constitutes a foreign main proceeding, the Court need not assess whether to grant recognition of the English Proceeding as a foreign nonmain proceeding pursuant to section 1517(b)(2) of the Code.

VI. DISCUSSION: PLAN RECOGNITION

U.S.-based companies are increasingly seeking to accomplish a financial restructuring by establishing U.K.-based affiliates that file proceedings under Part 26 or Part 26A in the U.K., and if the U.K. plans are sanctioned, then filing a chapter 15 in the U.S. *See, e.g.*, Order Granting Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code at 8 of 9, *In re Fossil (UK) Glob. Servs. Ltd.*, (No. 25-90525 (CML), ECF Doc. # 39) (Bankr. S.D. Tex. Nov. 12, 2025) (granting recognition and enforcement of the Part 26A plan of the recently established U.K. affiliate of Fossil Group International, a company incorporated and based in the U.S.) *See also In re Mega Newco Ltd.*, , 2025 WL 601463, at * 4 (recognizing and enforcing an English scheme of arrangement of a Mexican company that created an English “scheme” company that modified the Mexican company’s debt governed by New York law); Tr. Hr’g at 21–22, *In re Codere Fin.*, (No. 20-12151, ECF Doc. # 13) (recognizing and enforcing the scheme of arrangement that modified New York-law governed debt for a Spanish gaming company that established a new U.K. company as the scheme company).

While the Court does not disagree with the outcomes in *Fossil*, *Mega Newco*, or *Codere*, the Court is particularly sensitive to “bankruptcy tourism” and concerned by the opportunity for its abuse via COMI manipulation.

A. Risks of COMI Manipulation

Part 26 of the U.K. law (dealing with schemes of arrangement) and Part 26A (dealing with restructuring plans permitting cross-class cramdown) allow companies to restructure tranches of debt within a capital structure without putting an entire company into a costly and time-consuming chapter 11 case. Both approaches require approval of 75% in value of voting classes to obtain approval of the schemes or plans. To the credit of U.K. courts, they have carefully scrutinized the schemes and plans. The risk, however, is that by establishing an affiliate in the U.K. to file under Part 26 or Part 26A., a Debtor may circumvent the requirements of the U.S. Bankruptcy Code to disadvantage some creditors.

Eligibility to file a Part 26 or Part 26A proceeding in the U.K. is not based on COMI, but rather on “sufficient connection” of the plan company. COMI is the only basis for recognition and enforcement for cross border cases under chapter 15. “Sufficient connection” and “COMI” are not the same standards. In *In re Fossil*, the sufficient connection test was satisfied in the U.K. by changing the governing law of the debt from New York law to English law. If the U.S. court then declined to recognize the COMI in the U.K. of the plan company, the restructuring would fail.

In *In re Fossil*, the order entered by the Houston Bankruptcy Court does not analyze the issue of COMI. See Order, *In re Fossil (UK) Glob. Servs. Ltd.*, (No. 25-90525, ECF Doc. # 39) (entering an order concluding without analysis that “The U.K.

Proceeding is pending in England, where the Foreign Debtor has its ‘center of main interests’ as referred to in section 1517(b)(1) of the Bankruptcy Code”). In *In re Mega Newco Ltd.*, the court cautioned against allowing this structure in all cases, because the “ordinary predicate for chapter 15 relief could be stripped of meaning.” *In re Mega Newco Ltd.*, 2025 WL 601463, at *3. Judge Wiles explained:

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 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.

Id.

B. Assessing COMI Manipulation

In a case where a Part 26 Scheme or a Part 26A Plan is used to restructure debt of a non-U.K. company, a chapter 15 court should scrutinize COMI closely to be sure the Scheme or Plan has not been used unfairly to favor one group of creditors over others to achieve a result that could not be achieved in a chapter 11 case. *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006) (holding that COMI determinations should not be made “mechanically,” and 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”).

Insider exploitation, untoward manipulation, and overt thwarting of third-party expectations may result in a refusal to recognize and enforce the foreign scheme or plan for bad faith COMI manipulation. Tr. Hr’g at 21, *In re Codere Fin.*, (No. 20-12151, ECF

Doc. # 13) (“Those sorts of things could evidence bad faith COMI manipulation I want to be clear that if there were objections that established exploitation or untoward manipulation or thwarting of third-party expectations, it is doubtful that this Court would recognize and enforce this scheme of arrangement.”).

A lack of objections and support for a scheme of arrangement or plan weigh in favor of recognition. Tr. Hr’g at 21-22, *In re Codere Fin.*, (No. 20-12151, ECF Doc. # 13); *In re Mega Newco Ltd.*, 2025 WL 601463, at *4 (“If COMI manipulation is a 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.”).

The court in *In re Mega Newco Ltd.* highlighted that the scheme of arrangement was the product of negotiations with and consent of the affected creditors and that it enabled a broader restructuring with increased recoveries for all parties. *In re Mega Newco Ltd.*, 2025 WL 601463, at *4. The court deferred to the creditors in determining whether their expectations were thwarted. *Id.* (citing *In re SPhinX, Ltd.*, 351 B.R. at 117 (stating that “creditors presumably are in the best 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”))).

After carefully reviewing the record in this case, the Court found no evidence that the Plans that were sanctioned by the U.K. court were the result of exploitation or untoward manipulation that would lead the Court to deny recognition and enforcement of the Plans.

C. 11 U.S.C. § 1522(a) as a Guardrail

Notably, the Bankruptcy Code does not expressly prevent domestic entity from establishing a foreign affiliate to act as plan or scheme company and if a plan or scheme is sanctioned by a foreign court, seeking to have the foreign plan or scheme recognized and enforced in a chapter 15 case. However, U.S. courts should look closely at recognition requests, with particular attention to the requirements of section 1522(a). The “sufficiently protected” requirement of section 1522(a) provides a helpful guardrail to protect creditor interests. Tr. Hr’g at 21, *In re Codere Fin.*, (No. 20-12151, ECF Doc. # 13) (stating that “such relief can be granted only if the interests of creditors and other interested entities, including the debtor, are sufficiently protected”). The requirements and application of section 1522(a) are discussed in more detail below.

D. Enforcing the Plan, Including the Releases, as Discretionary Relief under Sections 1507 and 1521 is Proper

Again, section 1521(a) of the Code authorizes this Court to grant enumerated forms of relief in addition to “any appropriate relief” necessary to effectuate the purposes of chapter 15 and to protect a debtor’s assets and the interest of creditors. 11 U.S.C. § 1521. Further, section 1522(a) provides that the court may only grant discretionary relief under section 1521 if the interests of creditors are sufficiently protected. 11 U.S.C. § 1522(a). “Sufficient protection” has been interpreted as requiring “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.” *In re Atlas Shipping A/S*, 404 B.R. at 740 (internal citation and quotation marks omitted) (alteration in the original).

Given the lack of objections in this case, and overwhelming creditor support, the Court found that the interests of creditors are sufficiently protected.

1. Just Treatment of Creditors

First, the Code requires the Court to inquire whether the additional assistance will reasonably assure just treatment of all holders of claims against or interests in the debtor's property. Just treatment is satisfied upon a showing that the applicable law "provides for a comprehensive procedure for the orderly and equitable distribution of [the debtor]'s assets among all of its creditors." *In re Rede Energia S.A.*, 515 B.R. at 95 (quoting *In re Bd. of Directors of Telecom Argentina, S.A.*, 528 F.3d 162, 170 (2d Cir. 2008)) (alterations in the original); *In re Oi S.A.*, 587 B.R. 253, 267 (Bankr. S.D.N.Y. 2018).

The record reflects that creditors were treated fairly in the English Proceedings. The Foreign Representative has made a sufficient showing that the English Proceedings constituted a "comprehensive procedure" for the purposes of section 1521. Pursuant to the RSA, there is overwhelming support for the Restructuring Plans from Plan Creditors. (VP ¶ 99.) Under the Restructuring Plans, Plan Creditors will receive the Plan Consideration, which is preferable to liquidation because liquidation would likely result in a substantially lower return to Plan Creditors as compared to the Plan Consideration. (*Id.*) The Foreign Representative states that the Restructuring Plans will result in the same compromise or arrangement between the Debtors and each Plan Creditor as other similarly situated Plan Creditor. (*Id.*) Under the RAR, all Plan Creditors receive a better outcome under the Restructuring Plans compared to the Relevant Alternative. (RAR at 16.)

The Debtors held Plan Meetings on June 15, 2026 and the Restructuring Plans were approved with nearly unanimous consent, with unanimous votes in favor obtained in six out of the seven classes. (Supp. Stephansen Decl. ¶ 8.) Notably, the Legacy Noteholders, the only class where creditors voted against the Plans, has recovery of 13% under the Relevant Alternative compared with 26% under the Restructuring Plans. (RAR at 16.)

The terms of the Restructuring Plans require approval of the English Court in the form of orders sanctioning the Restructuring Plans. (VP ¶ 99.) The Plan Creditors were afforded extensive notice of, and multiple opportunities to review, consider, and object to, the Restructuring Plans and the Plan Releases. (Supp. Stephansen Decl. ¶ 9.) Plan Creditors were entitled to be heard with respect to the Restructuring Plans at both the Convening Hearing and the Sanction Hearing. (*Id.*) Plan Creditors received formal notice of the Plan Releases through multiple documents and proceedings and were provided with contact information for the Information Agent and the Debtors' advisors to direct any questions regarding the Restructuring Plans, including the Plan Releases. (*Id.* ¶ 10.) These materials and proceedings include the RSA, the Convening Hearing, the Explanatory Statement which serves a function comparable to that of a disclosure statement required under section 1125 of the Bankruptcy Code, the Plan Meetings, and the Sanction Hearing. (*Id.*)

Further, the Restructuring is the result of a months-long, hard fought negotiation between the Debtors and the Plan Creditors, with creditors organizing into groups and retaining sophisticated advisors before ultimately accepting the terms of Plan Releases. (*Id.* ¶ 13.) The Foreign Representative characterizes the Supporting Creditors subject to

the Plan Releases as “sophisticated investors who have had ample notice and opportunity to review and understand the terms of the Restructuring Plans, including the Plan Releases, and who have independently determined to support the Restructuring.” (*Id.* ¶ 15.)

At the Sanction Hearing, the Debtors walked the English Court through the Plan Releases and the English Court considered whether they were appropriate. (*Id.* ¶ 10.) No Plan Creditor appeared to object to the Plan Releases or otherwise oppose sanction of the Restructuring Plans. (*Id.*)

Accordingly, the English Proceedings constitute a comprehensive procedure for the distribution of estate property, and the first factor is satisfied.

2. Protection of U.S. Claimants

Next, this Court has found that U.S. creditors must be protected against “prejudice and inconvenience in the processing of claims” in the foreign proceeding. *Atlas Shipping*, 404 B.R. at 740 (internal citation omitted). This prong is clearly met. The Restructuring Plans address and restructure only the claims of the Plan Creditors (who are the only affected creditors) and do not contemplate any other class of creditors other than the Plan Creditors being affected. (VP ¶ 100.) All of the Plan Creditors have been given adequate notice of the Restructuring Plans, and the process for participating in or objecting to the Restructuring Plans is the same for United States creditors as all other creditors. (*Id.* ¶ 99.) This is sufficient to satisfy this factor of the analysis.

Furthermore, no party has objected to the Motion or otherwise represented to the Court that the English Proceedings prejudiced the rights of U.S. Creditors. Accordingly, the Court found that the second factor is satisfied.

3. Distribution of Estate Proceeds

Section 1521(b), provides that the foreign representative may be entrusted with “the distribution of all or part of the debtor's assets located in the United States.” 11 U.S.C. § 1521(b). Again, this Court has previously described the third element of “sufficient protection” as requiring that “the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law.” *In re Atlas Shipping A/S*, 404 B.R. at 740 (internal citation and quotation marks omitted) (alteration in the original).

Here, the Debtors seek to restructure the Debtors’ and the Group’s funded debt obligations, and the contractual terms of other classes of creditors or of other non-Plan Creditors are not the subject of the English Proceedings. (*Id.* ¶ 102.) Accordingly, the Foreign Representative submits that recognition and enforcement of the Restructuring Plans is necessary and appropriate and that the interests of creditors and other interested entities, including the Debtors, are sufficiently protected. (*Id.*)

4. Balancing of Interests

It is clear that that the balance of interests weighs in favor of granting the Requested Relief. The Requested Relief is necessary for the Restructuring and to carry out the provisions of the Restructuring Plans, which will benefit both the Debtors and their creditors.

Accordingly, the Court found that the balance of interests weighs in favor of granting the Requested Relief.

5. Additional Factors Considered

Relief is also appropriate under section 1507 of the Code. The analysis for section 1507 is broadly similar to that of section 1521, and having determined that the first, second and fourth factors have been met, which are identical to the section 1521 analysis, this Court found that these factors are also met for purposes of section 1507.

Section 1507(b)(3), the third factor, provides that the foreign proceeding must reasonably prevent “preferential or fraudulent dispositions of property of the debtor” 11 U.S.C. § 1507(b)(3). The English Proceedings are adequately protective, the third factor of section 1507 is also satisfied, and the Requested Relief is appropriate under section 1507 of the Code.

6. Enforcement of the Restructuring Plans are Not Manifestly Contrary to U.S. Public Policy

This Court has noted that the public-policy exception is an “exacting standard,” *ARD Fin., S.A.*, 2026 WL 817458, at *19, and an objecting party must demonstrate the existence of “exceptional circumstances concerning matters of fundamental importance for the United States.” *Id.* (quoting *Black Gold S.A.R.L.*, 635 B.R. at 528).

According to Daniel Glosband (the “Expert”), the author of the Expert Report, the Restructuring Plans should not raise public policy concerns because U.S. courts have previously recognized and given full force and effect to numerous schemes of arrangement and restructuring plans that included Non-Debtor Effects including third-party releases. (Expert Report ¶ 111.) Additionally, the Expert points out that the process required by the Companies Act 2006 is “broadly analogous to the disclosure, voting and confirmation framework applicable to chapter 11 plans under the US Bankruptcy Code.” (*Id.* ¶ 115.) The Expert asserts that because similar relief could be

granted in a domestic proceeding, recognition and enforcement of the Plans would not be manifestly contrary to public policy. (*Id.*)

The Expert additionally argues that *Purdue* was limited to statutory interpretation under the provisions of chapter 11 and that the Supreme Court expressly acknowledged that “Congress may authorize” such releases, indicating that such releases are not “manifestly contrary to fundamental U.S. policy.” (*Id.* ¶ 118; citing *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 670 B.R. 150, 164–72, (Bankr. D. Del. 2025).

As such, enforcement of the Restructuring Plans, including the Plan Releases, and the Sanction Order is not manifestly contrary to U.S. public policy.

VII. CONCLUSION

For the reasons discussed above, the Court **GRANTED** the Requested Relief and (i) recognized the English Proceedings as “foreign main proceedings”; (ii) recognized the Foreign Representative as the “foreign representative” of the Debtors; (iii) found that the Verified Petition meets the requirements of section 1515 of the Bankruptcy Code; and (iv) recognized the English Court’s Sanction Order, giving full force to the Sanction Order and the Restructuring Plans, including the Plan Releases.

A separate Order has already been entered to reflect the Court’s rulings.

Dated: July 14, 2026
New York, New York

Martin Glenn
MARTIN GLENN
Chief United States Bankruptcy Judge

Strategic Forum-Selection in Bankruptcy and Restructuring

BY JOANNA DIANE CAYTAS

Forum-selection is a key ingredient of liberty: the ability to choose the most advantageous law, jurisdiction and venue within the Westphalian framework of sovereignties is a highly valuable tool of legal engineering and of transaction design. At the same time, opposing creditor interests — some of them already manifested in regulatory policy — seek to reduce opportunistic selection both of domestic venues and foreign fora. The reverse is also true: In cases of involuntary bankruptcies, the opposite considerations may be at play, including the very ability of creditors to initiate a bankruptcy proceeding for an insolvent or illiquid company.

Incentives for Domestic and Transborder Strategic Forum-Selection

In the U.S., the Bankruptcy Code grants debtors broad discretion to choose the venue in which to reorganize based on the location of “the domicile, residence, principal place of business,” “principal assets,” or the venue in which an affiliate’s bankruptcy case is already pending.¹ Today, the overwhelming majority of U.S. corporate reorganizations are concentrated in the Southern District of Texas, District of Delaware and Southern District of New York.



Joanna Diane Caytas
Porter Hedges LLP
Houston

Highly experienced judges made these districts popular choices for large corporate bankruptcies due to their established expertise in handling complex cases, favorable legal precedents, and greater procedural efficiency and outcome predictability compared to less popular districts. At the same time, unfavorable or controversial decisions by bankruptcy or appellate courts, as well as major changes to local rules, including case assignment procedures, can have disproportionate effects on the significance of a domestic venue previously considered attractive for debtors, as well as senior creditors with a say in a debtor’s choice of venue.

Substantive outcomes may well change by the scores of millions in value as a result of regulatory arbitrage on seemingly minor procedural differences, speed of approving reorganization plans, and the law of the venue affecting the resolution of a bankruptcy dispute, the latter at least until the highest court of the land or the legislature resolves substantive or procedural law differences between the venues, as was the case with third-party releases in the U.S.² Domestically, this is true of all jurisdictions with composite federal and sub-federal laws (such as Australia, Canada or the U.S.), but it is also true

Joanna Diane Caytas is an attorney in the Bankruptcy, Restructuring & Creditors’ Rights section at Porter Hedges LLP in Houston, where her practice focuses on all aspects of bankruptcy and restructuring, with a particular emphasis on debtor representation in complex chapter 11 and chapter 15 cases across many industries, including crypto, energy, transportation and hospitality. She co-chairs ABI’s Commercial and Regulatory Law Committee and in 2026 served as the only U.S. IWIRC delegate to the UNCITRAL Colloquium on Harmonizing Law in The Age of Digital Trade and Finance.

more generally for any international choice of forum.

Foreign Fora and Regulatory Competition

Policy-driven differences in severity of bankruptcy laws toward debtors have long been examined by comparative studies, typically resulting in conclusions favorable to common law systems, but also finding that solutions in bankruptcy and restructuring favoring debtors need not translate overall into a diminution of creditors’ rights.³ Such favorable rules commonly include (1) policy preference for restructuring over liquidation; (2) absence of an obligation for managers to file a bankruptcy petition and absence of sanctions for failure to do so within a time limit; (3) possibility of automatic debt discharge upon completion of a court-approved plan; (4) availability of simplified procedures for small and medium-sized companies; (5) availability of speedier prepackaged proceedings; and (6) possibility of raising new financing during restructuring proceedings with privileges for creditors.⁴ The policies behind those rules emphasize due diligence while also taking into account the interests and best possible outcomes for all stakeholders.

COMI and Comity

The principal criterion guiding choice of bankruptcy fora around the world is the concept of Centre of Main Interests (COMI). By the traditional definition — as still reflected in EU law, while the UNCITRAL Model Law leaves the definition to implementing jurisdictions — the debtor’s COMI is the “place where the debtor conducts the administration of his interests on a regular basis and which is ascertainable by third parties.”⁵

For a company, COMI is presumed to be located in

¹ 28 U.S.C. § 1408.

² See *Harrington v. Purdue Pharma LP*, 603 U.S. 204 (2024).

³ See, e.g., Sylwia Morawska, et al., “Bankruptcy Law Severity for Debtors: Comparative Analysis Among Selected Countries,” *Eur. Res. Stud. J.*, Vol. XXIII, Special Issue 2, 659-86 (2020); Ziad Azar, “Bankruptcy Policy: An Empirical Investigation of 50 Jurisdictions Worldwide,” *Am. Bankr. L.J.* 82 (2007).

⁴ Morawska, *supra* n.3 at 665-68.

⁵ Regulation (EU) 2015/848, 2016 O.J. (L141/19), Art. 3(1).

continued on page 60

the place of its registered office.⁶ In *Eurofood IFSC Ltd.*, the European Court of Justice (ECJ) clarified that COMI must be “identified by reference to criteria that are both objective and ascertainable by third parties.”⁷ As a result, “empirically verifiable realities ... are capable of displacing the effects of such formal criteria as the place of registration.”⁸

The legislative and judicial reality in the Anglosphere, discussed below, has left the EU definition far behind. Today, many courts will deem changes of COMI for purposes of forum-selection in bad faith only if the change was not actually carried out.

Supranational Solutions

European Insolvency Regulation

The Recast Insolvency Regulation⁹ establishes rules for cross-border insolvency proceedings within the European Union. It clarifies which court has jurisdiction, the applicable law and the recognition of insolvency judgments across member states. But the Recast Insolvency Regulation leaves a broad swath of options for forum selection and regulatory arbitrage.

The EU Directive on Preventive Restructuring Frameworks and Second Chance (2019)¹⁰ provides a framework for EU members to adopt restructuring legislation analogous to U.S. Bankruptcy Code’s chapter 11, especially in jurisdictions where until then only liquidation options were available. In March 2026, a new directive harmonizing aspects of insolvency law between EU member states introduced minimum rules for corporate insolvency proceedings, including avoidance actions, prepackaged proceedings, creditors’ committees, asset-tracing across borders, and personal liability for directors for not initiating insolvency proceedings within three months of financial distress unless alternative measures offer equal protection for creditors.¹¹

Article 33 of the Recast Insolvency Regulation establishes a public policy (*ordre public*) exception as the only significant restriction to EU-wide recognition of main proceedings in another member state.

UNCITRAL Model Law on Cross-Border Insolvency

The UNCITRAL Model Law on Cross-Border Insolvency,¹² in the 29 years since its promulgation adopted by 62 states in a total of 65 jurisdictions,¹³ regulates access, recognition, relief and cooperation in transborder insolvencies. It was supplemented by two more recent UNCITRAL model laws: the Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment (2019), and the Model Law on Enterprise Group Insolvency with Guide to Enactment

(2020). With certain local differences, the Model Law has been adopted by major jurisdictions, including the U.S., the U.K., and Singapore.

Select Jurisdictional Approaches

United Kingdom

British insolvency law provides for multiple forms of restructuring:

(1) *Formal administration*, where a court-appointed trustee seizes control of the debtor entity to facilitate recovery by either a going-concern sale or by a liquidation.¹⁴

(2) *Company voluntary arrangement* (CVA),¹⁵ which leaves directors some control over the process. CVA is available only to small companies, requires plan approval by 75 percent in value and more than half in number of the unaffiliated creditors, and cannot bind secured creditors.

(3) *Scheme of arrangement* (SOA), authorized under part 26 of the Companies Act 2006¹⁶ for use by *both* solvent and insolvent debtors seeking to restructure debt quickly and with minimal judicial oversight. As long as certain statutory voting thresholds are met (75 percent in value of each class and majority in number in each class), claims even of secured creditors or bondholders may be reduced or discharged without unanimous consent in their class. The advantages of SOA include an option to negotiate the deal in advance, lower cost, and greater speed compared to other procedures. The British SOA has gained substantial popularity for debt restructuring worldwide and provided a highly influential model for similar legislation in Australia,¹⁷ Canada,¹⁸ Ireland,¹⁹ New Zealand,²⁰ South Africa,²¹ Nigeria,²² Singapore²³ and Malaysia.²⁴ Even civil law jurisdictions such as Spain, the Netherlands, Germany and Mexico are working on developing credible alternatives to the highly successful British model.²⁵

(4) *Restructuring plan* (RP), under the newer Part 26A of the Companies Act 2016,²⁶ allows cross-class cramdown and imposing a compromise on one or more classes of creditors. Unlike the SOA, RPs do not have a numerosity requirement for class acceptance. Instead, to carry a class, 75 percent by value of voting creditors need to accept the plan.

English courts have found COMI to exist by an extremely broad range of criteria, such as (a) holding assets in the jurisdiction, (b) carrying on activities there, (c) holding restructuring negotiations there, (d) having the debt instrument governed by

6 *Id.*

7 Case C-341/04, at ¶ 33 (interpreting Regulation (EC) 1346/2000).

8 Georg Friedrich Schläefer, *Forum Shopping Under the Regime of the European Insolvency Regulation*, *International Insolvency Studies*, International Insolvency Institute (2010), at 16 (quoting Ian F. Fletcher, *Insolvency in Private International Law: National and International Approaches* (2nd edition, Oxford University Press, 2005) at 7.41).

9 Regulation (EU) 2015/848, superseding Regulation (EC) No. 1346/2000.

10 Directive (EU) 2019/1023, 2019 O.J. (L172/20) (amending Directive (EU) 2017/1132).

11 Directive (EU) 2026/799.

12 UNCITRAL Model Law on Cross-Border Insolvency (1997).

13 UNCITRAL, *Status: UNCITRAL Model Law on Cross-Border Insolvency* (1997).

14 Insolvency Act of 1986, c. 45, Part II.

15 Insolvency Act of 1986, c. 45, Part I.

16 Companies Act 2006, Pt. 26.

17 Corporations Act 2001, Pt. 5.1.

18 Canada Business Corporations Act, S. 192.

19 Companies Act 2014, Pt. 9, Ch. 1.

20 Companies Act 1993, Pt. 15 (as amended in 2014).

21 Companies Act 71 of 2008.

22 Companies and Allied Matters Act 2020.

23 Companies Act, S. 210.

24 Companies Act 2016, S. 366.

25 Anthony J. Casey & Joshua C. Macey, “Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars,” 37 *Emory Bankr. Dev. J.* 463 (2021) at 490.

26 Corporate Insolvency and Governance Act 2020 (CIGA).

English law and subject to the exclusive jurisdiction of British courts, or (e) the debtor's COMI jurisdiction has no equivalent mechanisms available and a large majority of creditors are in favor — criteria almost as flexible as those routinely applied to justify U.S. courts' jurisdiction.²⁷

Singapore

Singapore positioned itself as a jurisdiction of choice for multinational corporations not only for registration of domicile, but also for schemes of arrangement based on as little as choice of local law for credit agreements, local assets, location of a cryptocurrency hot wallet, registration as a foreign company in Singapore, or submission to Singaporean jurisdiction.²⁸

Singapore overhauled its restructuring laws with the Insolvency, Restructuring and Dissolution Act 2018 (IRDA), which further enhanced the Singapore Companies Act (Cap. 50), amended in 2017. Singapore's restructuring and insolvency law framework currently provides for super-priority to creditors to provide debtor-in-possession financing, a global automatic moratorium on debt collection similar to the automatic stay under the U.S. Bankruptcy Code, a cramdown mechanism, and procedures governing pre-packaged schemes.²⁹

As part of the increasing attractiveness of Singapore as a venue, changes to the Singapore International Commercial Court Rules 2021 provide for restructuring and insolvency proceedings to be heard before the new Singapore International Commercial Court (SICC), comprised of leading international commercial law judges from both civil and common law traditions, including former Delaware Chief Bankruptcy Judge **Christopher Sontchi** and former Southern District of New York Bankruptcy Judge **James Peck**.³⁰ The SICC allows submissions by foreign lawyers by permission and the flexibility of conditional fee agreements in insolvency cases.³¹

Still, the geographical remoteness, small size and relative novelty of Singapore as a venue for U.S. or European practitioners and debtors somewhat limits the attractiveness of Singaporean courts in global competition for mega bankruptcies. That is not to say that Singapore will not succeed in attracting restructuring proceedings from Asia, Australia and the countries of the Persian Gulf.

United States

Libraries exist on chapter 11 of the U.S. Bankruptcy Code and its jurisprudence, considered the global gold standard for

restructuring. But if this were the case, companies would not pursue outgoing cross-border strategic forum-selection, since a debtor's choice of venue within the U.S. is extremely liberal and the competitive challenge for an overseas forum is substantial. Hence, this article will look at chapter 15, which regulates domestic recognition and enforcement of foreign bankruptcy proceedings.

Exercising comity, U.S. courts liberally grant preclusive effect to foreign judgments even absent a treaty and regardless of consistency with domestic procedural or substantive laws, as long as the foreign rule does not contradict U.S. policy. The foreign proceeding³² is a "main" proceeding if it is pending in a country of the debtor's COMI,³³ which remains undefined by the U.S. Bankruptcy Code except to provide that "in the absence of evidence to the contrary, the debtor's registered office ... is presumed to be" its COMI.³⁴

On the other hand, a foreign proceeding is "nonmain" when it pends in a country of the debtor's establishment.³⁵ But even non-main proceedings are entitled to recognition in the U.S., although certain relief is not automatic, including automatic stay upon recognition.³⁶

U.S. courts will enforce the outcome of foreign proceedings according to the foreign jurisdiction's rules, even if such relief would not be available in a chapter 11 restructuring, including enforcing through chapter 15 post-*Purdue Pharma* third-party releases.³⁷ That applies also to U.S.-based companies deciding to restructure abroad and to enforce the foreign plan under chapter 15 of the Bankruptcy Code. Such was the case of Nasdaq-listed Fossil Group's restructuring under English Part 26A of the Company's Act: It avoided the numerosity requirement and was enforced in a chapter 15 proceeding, including nonconsensual third-party releases allowable under English law.³⁸

Conclusion

The increasing convenience of foreign bankruptcy fora results in a variety of options for sophisticated debtors with international presence. At the same time, venue competition provides incentives to previously more conservative jurisdictions (such as most European nations) to consider debtor-friendly substantive reorganization strategies to remain relevant in the increasingly globalized restructuring choices of large enterprises. **abi**

32 11 U.S.C. § 101(23).

33 11 U.S.C. § 1502(4).

34 11 U.S.C. § 1516(c).

35 11 U.S.C. § 1502(5).

36 Compare 11 U.S.C. §§ 1520 and 1521.

37 *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH), 2025 WL 977967, at *1 (Bankr. D. Del. Apr. 1, 2025); *In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Jud.*, No. 25-10482 (MG), 2025 WL 1156607, at *1 (Bankr. S.D.N.Y. Apr. 21, 2025).

38 *In re Fossil (UK) Global Services Ltd.*, Chapter 15 Case No. 25-90525 (Bankr. S.D. Tex. Nov. 12, 2025), Order, ECF No. 39.

27 See, e.g., *Insolvency Forum Shopping*, Assoc. Bus. Recovery Professionals (July 2015), at 6-7.

28 See, e.g., Meiyen Tan & Josiah Tham, *Singapore: International Debt Restructuring Hub or More To Do?*, Singapore Global Restructuring Initiative, Singapore Management University (Aug. 23, 2024).

29 *Id.*

30 Tan & Tham, *supra* n.29; Appointments of International Judges to the Singapore International Commercial Court and Completion of Term on the Supreme Court Bench, PMOMedia Release, SG Courts (Dec. 15, 2023).

31 Tan & Tham, *supra* n.29.



KeyCite Yellow Flag

Declined to Follow by [In re B.C.I. Finances Pty Limited](#), Bankr.S.D.N.Y.,
July 8, 2025

97 F.4th 1244

United States Court of Appeals, Eleventh Circuit.

IN RE: Talal Qais Abdulmunem AL
ZAWAWI, Debtor in a Foreign Proceeding.

Talal Qais Abdulmunem Al Zawawi,
Plaintiff-Appellant,

v.

Colin Diss, Hannah Davie, Michael Leeds,
Foreign Representatives, Defendants-
Appellees.

No. 22-11024

|
Filed: 04/03/2024

Synopsis

Background: Foreign representatives filed motion for order granting recognition of United Kingdom (UK) insolvency proceedings as foreign main proceeding pursuant to Chapter 15 of the Bankruptcy Code. Foreign debtor opposed motion. The United States Bankruptcy Court for the Middle District of Florida, No. 6:21-bk-01251-LVV, [Lori V. Vaughan, J.](#), [634 B.R. 11](#), granted recognition, and foreign debtor appealed. The District Court, No. 6:21-cv-00894-GAP, [Gregory Presnell](#), Senior District Judge, [637 B.R. 663](#), affirmed. Foreign debtor appealed.

Holdings: The Court of Appeals, [Lagoa](#), Circuit Judge, held that:

^[1] the Bankruptcy Court's order granting recognition of foreign proceeding resolved a discrete bankruptcy proceeding and, thus, was "final" for purposes of appellate jurisdiction;

^[2] pursuant to circuit precedent, a foreign representative is not required to demonstrate that a foreign debtor meets the eligibility requirements set forth in the section of the Bankruptcy Code governing who may be a debtor under title

11 to obtain recognition of a foreign proceeding under Chapter 15; and

^[3] foreign debtor, though a citizen of Oman who asserted that he did not reside or have a domicile, a place of business, or property in the United States as of the petition date, was properly subject to a "foreign proceeding," and so the requirements for recognition set forth in the Bankruptcy Code were met.

Affirmed.

[Lagoa](#), Circuit Judge, filed specially concurring opinion.

[Tjoflat](#), Circuit Judge, filed specially concurring opinion.

Procedural Posture(s): On Appeal; Motion for Recognition as Foreign Main or Nonmain Proceedings; Judgment.

West Headnotes (17)

^[1] **Bankruptcy** **Cases Ancillary to Foreign Proceedings**

Recognition of a foreign proceeding under Chapter 15 of the Bankruptcy Code can subject a debtor's assets located in the United States to the Code's automatic stay and opens the door for foreign representatives to seek discovery and other relief related to those assets. [11 U.S.C.A. §§ 362, 1517, 1520](#), [1521](#).

[2 Cases that cite this headnote](#)

^[2] **Bankruptcy** **Scope of review in general**

In bankruptcy appeals, the Court of Appeals acts as a second court of review, independently examining the decisions of the bankruptcy court and applying the same standards as the district court.

^[3] **Bankruptcy** **Conclusions of law; de novo review**

Bankruptcy **Clear error**

In bankruptcy appeals, the Court of Appeals considers the bankruptcy court's decision directly, reviewing findings of fact for clear error and legal conclusions de novo.

^[4] **Bankruptcy**🔑Conclusions of law; de novo review

In bankruptcy appeals, the Court of Appeals reviews jurisdictional issues de novo.

^[5] **Bankruptcy**🔑Court of Appeals

Was jurisdictional determination properly made first? **Yes**

In bankruptcy appeal, before addressing the central issue on appeal, the Court of Appeals would first determine whether it had jurisdiction to hear the appeal.

[More cases on this issue](#)

^[6] **Federal Courts**🔑Particular Decisions, Matters, or Questions as Reviewable**Federal Courts**🔑In general; necessity

In general, the Court of Appeals has jurisdiction over only final judgments and orders. 🚩 28 U.S.C.A. § 158(d).

^[7] **Federal Courts**🔑Particular Decisions, Matters, or Questions as Reviewable**Federal Courts**🔑What constitutes final judgment

Judgment or order is generally considered “final,” for purposes of appellate jurisdiction, only if it ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. 🚩 28 U.S.C.A. § 158(d).

[1 Case that cites this headnote](#)

^[8] **Bankruptcy**🔑Finality

In the bankruptcy context, a judgment or order is considered “final,” for purposes of appellate jurisdiction, as long as it resolves a “proceeding,” even if it does not resolve the entire case. 🚩 28 U.S.C.A. § 158(d).

[1 Case that cites this headnote](#)

^[9] **Bankruptcy**🔑Finality

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, a different standard governs “finality” in the bankruptcy context than in civil cases generally, for purposes of appellate jurisdiction; delaying appeal of decision that resolves discrete controversy early on in bankruptcy case carries risk of substantial inefficiency in the event of reversal, that is, bankruptcy court could have to “un-ravel” several subsequent adjudications rendered in reliance on its earlier decision. 🚩 28 U.S.C.A. § 158(d).

^[10] **Bankruptcy**🔑Finality

Conducting a finality analysis in the bankruptcy context, for purposes of appellate jurisdiction, involves “tricky” task of considerable importance: correctly delineating the dimensions of a bankruptcy “proceeding.” 🚩 28 U.S.C.A. § 158(d).

^[11] **Bankruptcy**🔑Finality

Bankruptcy Court's order granting recognition of United Kingdom (UK) insolvency proceedings as foreign main proceeding pursuant to Chapter 15 of the Bankruptcy Code resolved a discrete bankruptcy “proceeding” and, thus, was considered “final” for purposes of appellate jurisdiction; petition triggered discrete procedural sequence that included notice and a hearing, although adjudication of petition did not occur “before” proceedings on the merits, that is, foreign proceeding, it occurred “apart” from those proceedings, introducing for the first time and fully occurring in a new legal system, federal courts of the United States, entire Chapter 15 action rested on initial decision to recognize foreign proceeding, and adjudication of petition was not dispute over minor details about how bankruptcy case would unfold, but was what determined whether parties to foreign proceeding would have access to judicial resources and power of the United States. 11 U.S.C.A. § 1517; 🚩 28 U.S.C.A. § 158(d).

[2 Cases that cite this headnote](#)

^[12] **Bankruptcy**🔑Cases Ancillary to Foreign Proceedings

A foreign representative is not required to demonstrate that a foreign debtor meets the

eligibility requirements set forth in the section of the Bankruptcy Code governing who may be a debtor under title 11 to obtain recognition of a foreign proceeding under Chapter 15 of the Code; although “straightforward” interpretation of Code section addressing applicability of chapters plainly provides that entirety of Chapter 1 applies to cases under Chapter 15, including section governing who may be a debtor, pursuant to binding circuit precedent eligibility language of Chapter 1 does not apply to cases ancillary to a foreign proceeding, that is, debtor eligibility under Chapter 1 is not a prerequisite to ancillary assistance. 11 U.S.C.A. §§ 101(13), 101(23), 103(a), 109(a), 1517.

4 Cases that cite this headnote

[13] Statutes Purpose

Statutes Absent terms; silence; omissions

In the context of statutory interpretation, every statute is a compromise of multiple interests, and the purpose of any given statute is shaped by both what the statute says and does not say.

[14] Statutes Context

Meaning, and therefore purpose, of any particular statutory language is necessarily shaped by its surrounding statutory context.

[15] Bankruptcy Cases Ancillary to Foreign Proceedings

Under Chapter 15 of the Bankruptcy Code, the automatic stay applies upon the recognition of a foreign main proceeding. 11 U.S.C.A. §§ 362, 1520(a)(1).

2 Cases that cite this headnote

[16] Bankruptcy Cases Ancillary to Foreign Proceedings

Foreign debtor, though a citizen of Oman who asserted that he did not reside or have a domicile, a place of business, or property in the United States as of the petition date, was properly subject to a “foreign proceeding,” that is, United Kingdom (UK) insolvency proceedings, and so the requirements for recognition set forth in the Bankruptcy Code were met; foreign

representatives seeking recognition were not required to demonstrate that foreign debtor also met the eligibility requirements set forth in the section of the Code governing who may be a debtor under title 11. 11 U.S.C.A. §§ 109(a), 1502(1), 1517.

2 Cases that cite this headnote

[17] Bankruptcy Cases Ancillary to Foreign Proceedings

One of the main aims of Chapter 15 of the Bankruptcy Code is to provide effective mechanisms for dealing with cases of cross-border insolvency. 11 U.S.C.A. § 1501(a).

1 Case that cites this headnote

***1247** Appeal from the United States District Court for the Middle District of Florida, D.C. Docket No. 6:21-cv-00894-GAP

Attorneys and Law Firms

Nicholas A. Shannin, Shannin Law Firm, PA, Kenneth D. Herron, Jr., Herron Hill Law Group, PLLC, Orlando, FL, for Plaintiff-Appellant.

Leyza Blanco, Juan Jose Mendoza, Sequor Law, PA, Miami, FL, for Defendants-Appellees.

Daniel Glosband, Goodwin Procter, LLP, Boston, MA, Jacqueline Calderin, Agentis, PLLC, Coral Gables, FL, for Amici Curiae.

Before Luck, Lagoa, and Tjoflat, Circuit Judges.

Opinion

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: 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 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 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).

¹¹One 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

***1249** In the memorandum of law accompanying their petition for recognition, the Foreign Representatives argued that all of the requirements 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 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 at the hearing and more thoroughly engaged with the arguments presented.

***1250** Following 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

[2] [3] [4] “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

[5] 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. *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

[6] [7] [8] [9] 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.

^[10] Thus, conducting a finality analysis in the bankruptcy context naturally 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.

^[11] 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 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. Thus, the order granting recognition in this case is subject to our jurisdiction under 28 U.S.C. § 158(d).

B. The Merits

^[12] 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 start of § 103(a)—limits the application of Chapter 1 to cases under Chapter 15. Accordingly, § 103(a) plainly provides that the entirety 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 § 304⁵—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, 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 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 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: (1) like the former § 304, Chapter 15 concerns ancillary assistance for "foreign proceedings" and (2) since *Goerg*, the definition of "debtor" has remained the same⁶ and the definition of "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.

[13] [14] [15] 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”). 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 obviously does contain those sections.¹¹ *See id.* §§ 103(a), 109(a).

*1255 ^[16] ^[17] 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 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.

IV. CONCLUSION

Accordingly, we affirm the bankruptcy court’s order granting recognition.

AFFIRMED.

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 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 1251–52. 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 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 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 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 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.

* * * *

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 proceeding¹ is substantially the same as the one we soundly interpreted in *In re Goerg*,² and *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 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 UNCITRAL⁵ *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 Chapter 15 in light of its "international origin"—as § 1508⁶ 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 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  *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  § 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 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 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 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 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. 11 U.S.C. § 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 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). 11 U.S.C. § 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 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, 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, 11 U.S.C. § 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), 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 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 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 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

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 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 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 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 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 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 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 automatic stay under 11 U.S.C. § 362. *See* § 1520(a)(1). The foreign representative also automatically 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).

Section 1521¹⁹ outlines discretionary relief 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 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 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.

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.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 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” 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 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 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 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.

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 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 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 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 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 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 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 “nonmain” 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 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 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(a) 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” 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, 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 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.

***1274** The UNCITRAL's Digest on case law under the Model Law helps confirm our conclusion. The Digest states, in commenting on  *In re Barnett*, 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 “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 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” 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:

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, 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 chart²⁷ 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 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 Barnett](#), 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. 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 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 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 “selfserving.” 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 [Fla. § 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 [Fla. § 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 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. Congress *could* write such a selfdefeating statute. But in my view, it did not do so.

All Citations

97 F.4th 1244, 30 Fla. L. Weekly Fed. C 823

Footnotes

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 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.

(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.”

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.

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 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 of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

6 Compare  11 U.S.C. § 101(12) (1982), with  11 U.S.C. § 101(13).

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.

 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.”).

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)).

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:

“[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)).

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.”

Section 1502(1) says: “ ‘debtor’ means an entity that is the subject of a foreign proceeding.”

United Nations Commission on International Trade Law (“UNCITRAL”).

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.”

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/un-citral/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/uncitral.un.org/files/media-documents/uncitral/en/table_of_concordance-1997-2013-guide-enactment.pdf.

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.

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.

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).

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.

Collier on Bankruptcy summarizes § 548 as follows:

Under section 548, the trustee may avoid a transfer made 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)).

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 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 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, 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.

17

Section 1520 provides:

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

- (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 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)
 - (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 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 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 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.](#)].

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).

[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.](#)].

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 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 \(1982\)](#).

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.”).

[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.

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).

27

Name of Shareholder	Number of Shares	Percentage
Alawi Zawawi	24	18.18
Talal Zawawi	24	18.18
Abdulmunim Zawawi	24	18.18
Azzam Zawawi	24	18.18
Siham Zawawi	12	9.09
Lubna Zawawi	12	9.09
Bushra Zawawi	12	9.09
TOTAL	132	100.00

QAPA INVESTING CORPORATION NV
(Incorporated in Curacao)

QAPA HOLDINGS, INC.
(a Florida Corporation)

QAPA Investing Company USA, Inc.
(a Florida Corporation)

Hawthorne Groves Apartments, Inc.
(A Florida Corporation)

Hawthorne Village at Port Orange, Inc.
(A Florida Corporation)

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.



KeyCite Yellow Flag

Disagreed With by [In re Zawawi](#), Bankr.M.D.Fla., August 31, 2021

737 F.3d 238

United States Court of Appeals,
Second Circuit.In re Katherine Elizabeth BARNET,
Drawbridge Special Opportunities Fund LP,
Appellant,

v.

Katherine Elizabeth Barnet, Foreign
Representative, William John Fletcher,
Foreign Representative, Appellees.

Docket No. 13–612.

|
Argued: Oct. 15, 2013.|
Decided: Dec. 11, 2013.**Synopsis**

Background: Foreign representatives sought recognition of “external administration” of debtor in Australia as foreign main proceeding. The United States Bankruptcy Court for the Southern District of New York, [Shelley C. Chapman](#), J., granted recognition. The court denied motion to stay discovery that had been brought by United States affiliate of debtor, and granted foreign representatives' discovery motion. Subsequently, the court granted a joint application for certification of recognition order for direct appeal. The Court of Appeals granted the joint application.

Holdings: The Court of Appeals, [Straub](#), Circuit Judge, held that:

[1] order by bankruptcy court recognizing “external administration” of debtor in Australia as foreign main proceeding was not appealable by United States affiliate of debtor when issued;

[2] discovery order was appealable;

[3] subsequent appealable discovery order ripened premature notice of appeal from initial recognition order, and thus recognition order was properly before Court of Appeals; and

[4] provision defining eligibility to be a debtor had to be satisfied before a bankruptcy court could grant recognition of foreign proceeding.

Vacated and remanded.

West Headnotes (15)

[1] **Bankruptcy** — Right of review and persons entitled; parties; waiver or estoppel

Order by bankruptcy court recognizing “external administration” of debtor in Australia as foreign main proceeding was not appealable by United States affiliate of debtor when issued; although foreign representatives who sought recognition stated their “intention to take discovery” of affiliate's directors, potential harm to affiliate was insufficient to justify appellate standing. 11 U.S.C.A. § 1520.

18 Cases that cite this headnote

[2] **Bankruptcy** — Right of review and persons entitled; parties; waiver or estoppel

In order to have standing to appeal from a bankruptcy court ruling, an appellant must be a person aggrieved, which is a person directly and adversely affected pecuniarily by the challenged order of the bankruptcy court; this test is stricter than Article III's “injury in fact” test, and its stringency is rooted in a concern that freely granting open-ended appeals to those persons affected by bankruptcy court orders will sound the death knell of the orderly disposition of bankruptcy matters. U.S.C.A. Const. Art. 3, § 1 et seq.

38 Cases that cite this headnote

[3] **Bankruptcy** — Right of review and persons entitled; parties; waiver or estoppel

Even absent a direct pecuniary interest in the litigation, a public interest may give a sufficient stake in the outcome of a bankruptcy case to confer appellate standing.

6 Cases that cite this headnote

^[4] **Bankruptcy**🔑 **Finality**

Bankruptcy court's order granting foreign representatives' motion for discovery with regard to United States affiliate of foreign debtor, that court had granted after recognizing "external administration" of debtor in Australia as foreign main proceeding, was appealable, since discovery order constituted final resolution of petition to take discovery in aid of foreign proceeding in that there would not be final resolution on the merits beyond discovery relief itself. 11 U.S.C.A. §§ 1515, 1520.

14 Cases that cite this headnote

^[5] **Bankruptcy**🔑 **Right of review and persons entitled; parties; waiver or estoppel**

A bankruptcy court's order recognizing a foreign proceeding as a foreign main proceeding is not itself appealable by a party that is not directly affected by the relief that the order provides. 11 U.S.C.A. § 1520.

16 Cases that cite this headnote

^[6] **Bankruptcy**🔑 **Decisions Reviewable**

As a general rule, discovery orders are not appealable unless the object of the discovery order refuses to comply and is held in contempt.

8 Cases that cite this headnote

^[7] **Bankruptcy**🔑 **Notice of Appeal; Time** **Bankruptcy**🔑 **Scope of review in general**

Subsequent appealable order granting foreign representatives' motion for discovery with regard to United States affiliate of foreign debtor ripened premature notice of appeal from initial order by bankruptcy court recognizing "external administration" of debtor in Australia as foreign main proceeding, and thus recognition order properly was before Court of Appeals, since direct appeal of recognition order had occurred after

court had granted discovery motion and those orders had merged; mistake in form of notice by parties not discussing discovery order in their joint request for direct appeal was not fatal because resolution of validity of recognition order would be dispositive of whether discovery was available and foreign representatives otherwise did not suffer prejudice. 11 U.S.C.A. §§ 1515, 1520, 1521(a)(4), 1782(a); 28 U.S.C.A. § 158(d)(2)(A)(i, iii), (d)(2)(B)(i); F.R.A.P. Rule 3(c)(4), 28 U.S.C.A.

9 Cases that cite this headnote

^[8] **Bankruptcy**🔑 **Notice of Appeal; Time**

A premature notice of appeal from a nonfinal order may ripen into a valid notice of appeal if a final judgment has been entered by the time the appeal is heard and the appellee suffers no prejudice; this rule applies even if the final judgment was not itself appealed.

4 Cases that cite this headnote

^[9] **Bankruptcy**🔑 **Conclusions of law; de novo review**

Bankruptcy🔑 **Clear error**

The Court of Appeals reviews a bankruptcy court's legal conclusions de novo, accepting the bankruptcy court's factual findings unless clearly erroneous.

10 Cases that cite this headnote

^[10] **Bankruptcy**🔑 **Conclusions of law; de novo review**

A lower court decision interpreting the meaning of a statute is reviewed de novo.

2 Cases that cite this headnote

^[11] **Statutes**🔑 **Plain language; plain, ordinary, common, or literal meaning**

Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.

5 Cases that cite this headnote

[12] **Statutes**🔑 Plain Language; Plain, Ordinary, or Common Meaning**Statutes**🔑 Language

Where the statute's language is plain, the sole function of the courts is to enforce it according to its terms; indeed, the preeminent canon of statutory interpretation requires Court of Appeals to presume that the legislature says in a statute what it means and means in a statute what it says there.

8 Cases that cite this headnote

[13] **Statutes**🔑 Statute as a Whole; Relation of Parts to Whole and to One Another

Statutory enactments should be read so as to give effect, if possible, to every clause and word of a statute.

9 Cases that cite this headnote

[14] **Bankruptcy**🔑 Cases Ancillary to Foreign Proceedings

Provision defining eligibility to be a debtor had to be satisfied before a bankruptcy court could grant recognition of foreign proceeding; although foreign representatives, not debtor, sought recognition, presence of debtor was inextricably intertwined with very nature of a foreign proceeding, both in terms of how such proceeding was defined and in terms of relief that could be granted. 📄 11 U.S.C.A. §§ 109(a), 1515, 1520.

27 Cases that cite this headnote

[15] **Statutes**🔑 Context

A properly limited contextual analysis of statutory language is encompassed within the ambit of a textual analysis.

2 Cases that cite this headnote

Attorneys and Law Firms

*240 David F. Heroy ([Jacob Kaplan](#), Baker & McKenzie LLP, New York, NY; Erin Elizabeth Broderick, Baker & McKenzie

LLP, Chicago, IL, on the brief), Baker & McKenzie LLP, New York, NY, for Appellant.

[Howard Seife](#) ([Madlyn Gleich Primoff](#), Kaye Scholer LLP, New York, on the brief), Chadbourne & Parke LLP, New York, NY, for Appellees.

Before: [JACOBS](#), [STRAUB](#), Circuit Judges, and KUNTZ,* District Judge.

Opinion

[STRAUB](#), Circuit Judge:

Drawbridge Special Opportunities Fund LP (“Drawbridge”) appeals from a September 6, 2012 order of the United States *241 Bankruptcy Court for the Southern District of New York (Shelley C. Chapman, *Bankruptcy Judge*) granting recognition of a foreign main proceeding (“Recognition Order”). Because we find that 📄 11 U.S.C. § 109(a) applies to the debtor in a foreign main proceeding under Chapter 15 of the Bankruptcy Code, we **VACATE** and **REMAND** to the Bankruptcy Court for further proceedings consistent with this opinion.

BACKGROUND

Foreign Representatives are the liquidators of Octaviar Administration Pty Ltd. (“OA”), a company incorporated in Queensland, Australia. OA was placed into “external administration” in Australia on October 3, 2008. On July 31, 2009, the Supreme Court of Queensland ordered that OA be liquidated. As part of the investigation into OA's affairs, various Australian affiliates of Drawbridge have been investigated and, on April 3, 2012, a lawsuit was commenced in Australia against certain of those affiliates seeking AUD 210,000,000.

On August 13, 2012, Foreign Representatives petitioned the Bankruptcy Court for an order recognizing the Australian OA liquidation proceeding as a foreign main proceeding pursuant to 11 U.S.C. § 1515. Drawbridge appeared and filed an objection on August 30, 2012. On September 6, 2012, the Bankruptcy Court entered the Recognition Order, and Drawbridge filed a notice of appeal to the District Court on September 20. On October 5, 2012, Foreign Representatives filed a motion seeking discovery from Drawbridge and other parties. On October 9, 2012, Drawbridge sought a stay pending appeal.

On November 28, 2012, the Bankruptcy Court granted a joint application for certification of the Recognition Order for direct appeal to this Court pursuant to 28 U.S.C. § 158(d)(2)(A)(i), (A)(iii) and (B)(i). The same day, the court entered an opinion explaining its decision. The court determined that (1) there was no controlling precedent governing its holding “that a debtor within the meaning of chapter 15 is not required to have a domicile, residence, place of business or property in the United States”; (2) the same issue was “a matter of public importance” that would “dramatically impact the jurisdiction of the United States bankruptcy courts and the use of Chapter 15 to assist in the administration of cross-border insolvency cases and the legitimate investigation of claims and assets in the United States”; and (3) a direct appeal would “materially advance the progress of this Chapter 15 case.” Mem. Op. in Supp. of Certification of Direct Appeal to the Court of Appeals for the Second Circuit at 6, 9, *In re Barnett*, No. 12–13443, Dkt. No. 47 (Bankr.S.D.N.Y. Nov. 28, 2012).

The Bankruptcy Court denied Drawbridge's motion to stay discovery on December 10, 2012, and granted Foreign Representatives' discovery motion on December 12. The parties filed a joint application for direct appeal on December 21. On February 21, 2013, we granted the joint application and issued a stay of 17 discovery.

DISCUSSION

I. Appellate Standing

^[1] This case presents an unusual jurisdictional thicket. Foreign Representatives argue that Drawbridge lacks appellate standing because Drawbridge is not aggrieved by the Recognition Order—the order named in the parties' joint request for direct appeal. We agree that, under the facts of this case, Drawbridge may not appeal from the Recognition Order. However, that conclusion does not end our **242* analysis. The Bankruptcy Court's subsequent discovery order cured the jurisdictional infirmity notwithstanding the parties' failure to discuss the discovery order in the joint request for direct appeal. In effect, we construe the appeal as being from the discovery order, which appeal brings up for review the non-final Recognition Order that was a necessary prerequisite to discovery.

A. The Recognition Order

We first consider whether Drawbridge is permitted to appeal from the Recognition Order. As this appeal is direct, the issue of appellate standing was not expressly addressed by any lower court opinion. Regardless, we review jurisdictional questions of law *de novo*. See *Adams v. Zarnel (In re Zarnel)*, 619 F.3d 156, 161 (2d Cir.2010) (“[W]e must first determine whether we have jurisdiction. ... We review these legal issues [standing and mootness] *de novo*.”).

^[2] ^[3] “The current Bankruptcy Code prescribes no limits on standing beyond those implicit in Article III of the United States Constitution. Congress has given us jurisdiction over all final decisions, judgments, orders, and decrees of the district courts in bankruptcy cases....” *DISH Network Corp. v. DBSD N. Am., Inc. (In re DBSD N. Am., Inc.)*, 634 F.3d 79, 88 (2d Cir.2011) (internal citations and quotation marks omitted). Nonetheless, our precedents establish “‘that in order to have standing to appeal from a bankruptcy court ruling, an appellant must be a person aggrieved—a person directly and adversely affected pecuniarily by the challenged order of the bankruptcy court.’” *Id.* at 89 (internal quotation marks omitted) (quoting *Int'l Trade Admin. v. Rensselaer Polytechnic Inst.*, 936 F.2d 744, 747 (2d Cir.1991)).¹ This test is “stricter than Article III's ‘injury in fact’ test,” and its “stringency ... is rooted in a concern that freely granting open-ended appeals to those persons affected by bankruptcy court orders will sound the death knell of the orderly disposition of bankruptcy matters.” *Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 388 (2d Cir.1997); see *In re DBSD N. Am., Inc.*, 634 F.3d at 110 (quoting *In re Gucci*, 126 F.3d at 388).

The Recognition Order neither names Drawbridge nor directs any relief against Drawbridge. Nor does Drawbridge argue that it is affected by the automatic relief provided for in 11 U.S.C. § 1520.² See *Morning Mist Holdings Ltd. v. Kryss (In re Fairfield Sentry Ltd.)*, 714 F.3d 127 (2d Cir.2013) (considering an appeal from a recognition order by the party aggrieved by the automatic stay imposed by 11 U.S.C. § 1520(a)(1)). Instead, Drawbridge relies on the fact that at oral argument on the Recognition Order, Foreign Representatives stated their “intention ... to take discovery” of the American “directors of the Drawbridge affiliates that were sued in Australia.” Tr. of Record at 28:2–5, *In re Octaviar*

Administration Pty. Ltd., No. 12–13443 (Bankr.S.D.N.Y. Sept. 6, 2012).

Were we to accept this argument, however, it would undermine the pecuniary interest test and ignore our “concern that if appellate standing is not limited, bankruptcy litigation will become mired in endless appeals brought by the myriad of parties who are indirectly affected by every bankruptcy court order.” *Kabro Assocs. of W. Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 273 (2d Cir.1997) (internal quotation marks omitted). It is not the intentions of a litigant that cause pecuniary harm but the relief directed by a Bankruptcy Court, and here the Recognition Order contained no relief that affected Drawbridge.

Indeed, we have explicitly stated that “potential harm” from a bankruptcy court order is insufficient to justify appellate standing. See *Kane v. Johns–Manville Corp. (In re Johns–Manville Corp.)*, 843 F.2d 636, 642 n. 3 (2d Cir.1988) (noting that “potential harm incident to the bankruptcy court’s orders” is insufficient to render a party “directly and pecuniarily affected by them”). Accord *Nat’l Fire Ins. Co. of Hartford v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 393 Fed.Appx. 467, 469 (9th Cir.2010) (summary order) (“Courts of appeal routinely deny standing ‘to marginal parties involved in bankruptcy proceedings who, even though they may be exposed to some potential harm incident to the bankruptcy court’s order, are not directly affected by that order.’” (quoting *Travelers Ins. Co. v. H.K. Porter Co.*, 45 F.3d 737, 741 (3d Cir.1995))); *Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 778 (9th Cir.1999) (endorsing our distinction in *In re Johns–Manville* between a “creditor opposing a plan of reorganization,” who has standing, and “marginal parties ... who face potential harm,” who do not).

Here, the Recognition Order subjected Drawbridge only to potential future harm. To hold otherwise would ignore the Bankruptcy Court’s discretion to deny discovery under *11 U.S.C. § 1521*. It follows that the Recognition Order was not appealable by Drawbridge when issued.

B. The Discovery Order

^[4] ^[5] Although we conclude that a recognition order is not itself appealable by a party that is not directly affected by the relief that order provides, this conclusion does not end our standing analysis. Here, Drawbridge is aggrieved by an order

of the Bankruptcy Court—the discovery order issued on December 12, 2012. We next consider whether that order is appealable and conclude that it is.

^[6] Because they are not final orders, the general rule is that discovery orders are not appealable unless the object of the discovery order refuses to comply and is held in contempt. See, e.g., *Golan v. Am. Airlines, Inc. (In re Air Crash at Belle Harbor, N.Y. on Nov. 12, 2001)*, 490 F.3d 99, 104 (2d Cir.2007); *Glutzer v. Stewart (In re S.E.C. ex rel. Glutzer)*, 374 F.3d 184, 188 (2d Cir.2004) (“[G]enerally, a litigant who wants to challenge a discovery order must disobey the order, be held in contempt of court, then bring an appeal....”).

*244 This rule has an exception for discovery orders issued pursuant to *28 U.S.C. § 1782(a)*, which provides for discovery “for use in a proceeding in a foreign or international tribunal.” *28 U.S.C. § 1782(a)*; see *Chevron Corp. v. Berlinger*, 629 F.3d 297, 306 (2d Cir.2011). In *Chevron Corp.*, we reasoned that the discovery order “constitutes the final resolution of a petition to take discovery in aid of a foreign proceeding” and is, therefore, “immediately appealable.” *629 F.3d at 306*. The same reasoning applies in this context. Chapter 15 proceedings, like *Section 1782* proceedings, are ancillary to a “suit in another tribunal,” *id.*, such that there will never be a final resolution on the merits beyond the discovery relief itself. It follows that the discovery order entered by the Bankruptcy Court was appealable.

Moreover, we have previously entertained an appeal from a party aggrieved by the automatic relief imposed by *Section 1520*. See *In re Fairfield Sentry Ltd.*, 714 F.3d at 131. Appellate standing was warranted in *Fairfield* precisely because once recognition is granted, the imposition of automatic relief requires no further action by the Bankruptcy Court. The discretionary relief permitted by *Section 1521* requires an extra step, but once that step is taken and the Bankruptcy Court has chosen to exercise its discretion, a party aggrieved by *Section 1521* stands in the same position as one aggrieved by *Section 1520*. If appellate review is available to one, therefore, it should be available to the other.

^[7] Having concluded that we would have jurisdiction over an appeal from the discovery order, two questions remain: (1) whether the discovery order grants us jurisdiction over a premature notice of appeal from the Recognition Order; and (2) if so, whether an appeal from the discovery order brings

up for review the Recognition Order. We answer both questions in the affirmative.

The notice of appeal filed on September 20, 2012, was directed to the District Court, not to this Court. Before the District Court assumed jurisdiction, however, the Bankruptcy Court, *sua sponte*, suggested that the parties seek certification for direct appeal to this Court, giving as its reason that Drawbridge and its affiliates “really don’t want to produce documents and [Foreign Representatives] really want the documents.” Tr. of Record at 25:3–7, *In re Octaviar Administration Pty. Ltd.*, No. 12–13443 (Bankr.S.D.N.Y. Oct. 23, 2012). Earlier in the same proceeding, Foreign Representatives had already made their argument that Drawbridge lacked appellate standing. *See id.* at 6:1–14:11. The Bankruptcy Court’s statement that appellate review should be sought to expedite discovery, therefore, did not occur in a vacuum. Rather, the Bankruptcy Court believed that our resolution of the validity of the Recognition Order would be dispositive of whether discovery was available. The parties then jointly petitioned the Bankruptcy Court for certification of direct appeal, which was granted on November 28, 2012. The Bankruptcy Court issued its discovery order on December 12, 2012, and the parties did not file their joint request for direct appeal to this Court until December 21, 2012. At no time, therefore, was any notice of appeal or request for direct appeal pending in this Court before the 17 discovery order had been issued.

^[8] “We have held that a premature notice of appeal from a nonfinal order may ripen into a valid notice of appeal if a final judgment has been entered by the time the appeal is heard and the appellee suffers no prejudice. This rule applies even if the final judgment was not itself appealed.” **245 Community Bank, N.A. v. Riffle*, 617 F.3d 171, 174 (2d Cir.2010) (per curiam) (internal citations and quotation marks omitted); *see Berlin v. Renaissance Rental Partners, LLC*, 723 F.3d 119, 128 (2d Cir.2013) (same as first sentence of *Riffle* quote).

In *Riffle*, we exercised jurisdiction over an appeal from a non-final (and, hence, non-appealable) denial of a motion to dismiss because by the time the appeal reached us, the underlying bankruptcy proceeding was rendered final (and appealable) by a subsequent confirmation order. *617 F.3d at 173–74*. As in this case, the notice of appeal in *Riffle* was filed after the order that rendered the lower court proceeding final. *Id.* at 173. The discovery order, therefore, caused the

“premature notice of appeal from” the Recognition Order to “ripen into a valid notice of appeal.” *Id.* at 174.

We would reach the same result applying the Federal Rules of Appellate Procedure. In *Smith v. Barry*, the Supreme Court ruled that “[i]f a document filed 18 within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal.” *Smith v. Barry*, 502 U.S. 244, 248–49, 112 S.Ct. 678, 116 L.Ed.2d 678 (1992); *see id.* (“[W]hen papers are technically at variance with the letter of Rule 3, a court may nonetheless find that the litigant has complied with the rule if the litigant’s action is the functional equivalent of what the rule requires.... Although courts should construe Rule 3 liberally when determining whether it has been complied with, noncompliance is fatal to an appeal.” (internal quotation marks and brackets omitted)). The year after *Barry*, the Federal Rules of Appellate Procedure were amended to add what is now Rule 3(c)(4), providing that “[a]n appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.” Rule 3(c)(4), therefore, codifies *Barry*’s instruction to “construe Rule 3 liberally” and to overlook technical variances.

Our precedents are in accord. Invoking Rule 3(c)(4), we interpreted a notice of appeal from a final judgment entered “on the 25th day of April, 2012, and from each part thereof” as also appealing from orders entered on five other days ranging from June 3, 2008, to April 24, 2012. *L.I. Head Start Child Dev. Servs., Inc. v. Econ. Opportunity Comm’n of Nassau Cnty., Inc.*, 710 F.3d 57, 63 n. 3 (2d Cir.2013). We have similarly construed an appeal from the denial of a habeas petition as also appealing from a subsequent motion for reconsideration. *See Marrero Pichardo v. Ashcroft*, 374 F.3d 46, 54–55 (2d Cir.2004). In *Marrero Pichardo*, we noted that “[i]n determining whether to permit a defective notice of appeal, this court considers the notice of appeal so as to remain faithful to the intent of the appellant, fair to the appellee, and consistent with the jurisdictional authority of this court.” *Id.* at 55 (internal quotation marks omitted).

In this case, there can be no argument that Foreign Representatives were in any way deprived of the “notice required by Rule 3” or otherwise suffered prejudice. The only legal issues raised on appeal concern the validity of the Recognition Order, which is mentioned in the joint request for direct appeal. Moreover, the Bankruptcy Court itself suggested that the purpose of direct appeal was to resolve the

question of discovery by determining the validity of the Recognition Order. *See* Tr. of Record at 25:3–7, *In re Octaviar Administration Pty. Ltd.*, No. 12–13443 (Bankr.S.D.N.Y. Oct. 23, 2012). On the Bankruptcy Court's suggestion, the parties jointly pursued a direct appeal, which request was only filed with this Court after the appealable order had been issued by *246 the Bankruptcy Court. The failure to specifically identify the December 12 discovery order, therefore, was a mistake of form for which the “appeal must not be dismissed.” *Fed. R.App. P. 3(c)(4)*.

Finally, a correctly noticed appeal from the discovery order would bring up for review the Recognition Order. Such an appeal, as with an appeal from any other final order, “opens the record and permits review of all rulings that led up to the judgment.” 15A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3905.1 (2d ed.); *see Fielding v. Tollaksen*, 510 F.3d 175, 179 (2d Cir.2007) (“[W]hen a district court enters a final judgment in a case, interlocutory orders rendered in the case typically merge with the judgment for purposes of appellate review.” (internal quotation marks omitted)); *Anobile v. Pelligrino*, 303 F.3d 107, 115 (2d Cir.2002) (“Generally, absent prejudice to the appellees, this Court interprets an appeal from a specific order disposing of the case as an appeal from the final judgment, which incorporates all previous interlocutory judgments in that case and permits their review on appeal.”). Indeed, in this case, the Recognition Order was a necessary prerequisite to ordering discovery. *See* 11 U.S.C. § 1521(a)(4) (providing for discovery “[u]pon recognition”). The Recognition Order is properly before us, therefore, as it has merged with the subsequent discovery order.

Indeed, in our prior cases considering premature notices of appeal that ripen into valid notices of appeal we have considered the issues raised by the non-final orders appealed from. *See Berlin*, 723 F.3d at 127–28 (considering issues arising from the non-final attorneys' fees order); *Riffle*, 617 F.3d at 173–74 (considering issues arising from the non-final denial of a motion to dismiss). We see no reason not to do the same here.

II. The Recognition Order

[9] [10] Having determined that we have jurisdiction over this appeal, we now turn to the merits, *i.e.*, whether *Section 109(a)* applies to a debtor in a Chapter 15 proceeding. We review a “bankruptcy court's legal conclusions *de novo*”

“accepting the bankruptcy court's factual findings unless clearly erroneous.” *In re Fairfield Sentry*, 714 F.3d at 132; *accord Super Nova 330 LLC v. Gazes*, 693 F.3d 138, 141 (2d Cir.2012) (applying the same standard). A lower court decision “interpreting the meaning of a statute” is also reviewed *de novo*. *United States v. DiCristina*, 726 F.3d 92, 96 (2d Cir.2013); *see Kreisberg v. HealthBridge Mgmt., LLC*, 732 F.3d 131, 137 (2d Cir.2013) (“We review *de novo* the District Court's ... interpretation of the Constitution and federal statutes and regulations.”).

[11] [12] “Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.” *United States v. Kozeny*, 541 F.3d 166, 171 (2d Cir.2008) (internal quotation marks omitted). “ ‘Where the statute's language is plain, the sole function of the courts is to enforce it according to its terms.’ ” *DiCristina*, 726 F.3d at 96 (quoting *Kozeny*, 541 F.3d at 171). Indeed, “[t]he preeminent canon of statutory interpretation requires us to ‘presume that the legislature says in a statute what it means and means in a statute what it says there.’ ” *BedRoc Ltd. v. United States*, 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 (2004) (plurality op.) (internal brackets omitted) (quoting *Ct. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992)); *see Dodd v. United States*, 545 U.S. 353, 357, 125 S.Ct. 2478, 162 L.Ed.2d 343 (2005) (quoting *Germain*, 503 U.S. at 253–54, 112 S.Ct. 1146).

[13] “Statutory enactments should, moreover, be read so as ‘to give effect, if possible, to every clause and word of a statute.’ ” *DiCristina*, 726 F.3d at 96 (quoting *Duncan v. Walker*, 533 U.S. 167, 174, 121 S.Ct. 2120, 150 L.Ed.2d 251 (2001)); *see Nwozuzu v. Holder*, 726 F.3d 323, 328 (2d Cir.2013) (“[A] statute must be construed to give effect, if possible, to every clause and word....” (internal quotation marks omitted)); *Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 156 (2d Cir.2013) (“One of the most basic interpretive canons is that a statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.” (internal quotation marks and brackets omitted)).

“The recognition of foreign proceedings is governed by Sections 1515 through 1524.” *In re Fairfield Sentry*, 714 F.3d at 132. The basic requirements for recognition are

outlined in 11 U.S.C. § 1517(a): (1) the proceeding “is a foreign main proceeding or foreign nonmain proceeding” as defined by 11 U.S.C. § 1502; (2) “the foreign representative applying for recognition is a person or body”; and (3) the petition for recognition meets the requirements of 11 U.S.C. § 1515.

A “foreign main proceeding”—the category relevant to this appeal—is “a foreign proceeding pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). A “foreign proceeding” is “a collective judicial or administrative proceeding in a foreign country ... 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 17 the purposes of reorganization or liquidation.” 11 U.S.C. § 101(23). Debtor is defined, “[f]or the purposes of this chapter [15],” as “an entity that is the subject of a foreign proceeding.” 11 U.S.C. § 1502(1).

¹⁴¹ The question presented by this appeal is whether 11 U.S.C. § 109(a) applies to a debtor under Chapter 15. Section 109(a) provides: “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.” Section 103(a) of Title 11 provides that, other than for an exception not relevant here, Chapter 1 “of this title ... appl[ies] in a case under chapter 15.” Section 109, of course, is within Chapter 1 of Title 11 and so, by the plain terms of the statute, it applies “in a case under chapter 15.” Because Foreign Representatives made no attempt to establish that OA had a domicile, place of business or property in the United States, recognition should not have been granted.

The straightforward nature of our statutory interpretation bears emphasis. Section 103(a) makes all of Chapter 1 applicable to Chapter 15. Section 109(a)—within Chapter 1—creates a requirement that must be met by 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 the foreign proceeding.

Commentators have reached the same conclusion. *See* Collier on Bankruptcy ¶ 1501.03 (Alan N. Resnick & Henry J. Somme eds., 16th ed.) (“Although chapter *248 15 is the principal chapter of the Bankruptcy Code that governs the conduct of ancillary cases, several other sections of the Bankruptcy Code ... directly affect cases under chapter 15. These include ... section 109, which limits the types of debtors eligible for chapter 15....”); Susan Power Johnston, *Conflict Between Bankruptcy Code §§ 109(a) and 1515: Do U.S. Bankruptcy Courts Have Jurisdiction Over Chapter 15 Cases If the Foreign Debtor Has No Assets or Presence in the U.S.?*, 17 J. Bankr.L. & Prac. 5, art. 6 (Aug.2008), at 1 (“[S]ection 109(a) cannot be reconciled with Chapter 15 and ... contrary to Congress' intent, foreign representatives of foreign debtors without assets in the U.S. are not, on the face of the statute, entitled to the assistance of U.S. bankruptcy courts.”).

Foreign Representatives advance several arguments to resist this conclusion. *First*, they argue that Section 109(a) creates a requirement for debtors “under this title,” whereas OA is a debtor under the Australian Corporations Act, not under Title 11. Put another way, Foreign Representatives argue that they are not seeking recognition of a debtor and that no debtor appeared before the Bankruptcy Court; rather, Foreign Representatives appeared seeking recognition of a foreign proceeding.

This argument fails, however, because the presence of a debtor is inextricably intertwined with the very nature of a Chapter 15 proceeding, both in terms of how such a proceeding is defined and in terms of the relief that can be granted. It stretches credulity to argue that the ubiquitous references to a debtor in both Chapter 15 and the relevant definitions of Chapter 1 do not refer to a debtor under the title that contains both chapters.

Although Foreign Representatives are correct that recognition is sought by a foreign representative, not by a debtor, 11 U.S.C. § 1515(a), “[t]he term ‘foreign representative’ means a person or body ... authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs,” 11 U.S.C. § 101(24). Similarly, as noted above, a foreign main proceeding is a foreign proceeding “pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1502(4). Moreover, Section 1502 defines a “debtor” as “the subject of a foreign proceeding,” and the definition of “foreign proceeding” identifies “the

assets and affairs of the debtor” as its subject. [11 U.S.C. §§ 101\(23\), 1502\(1\)](#).

In addition, 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 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”). Even the relief that Foreign Representatives seek requires a debtor under [Title 11](#), as [Section 1521\(a\)\(4\)](#) provides for “the examination of witnesses ... concerning the debtor's assets, affairs, rights, obligations or liabilities.”

***249** *Second*, Foreign Representatives argue that even if OA must qualify as a debtor under [Title 11](#), it is only required to meet the Chapter 15–specific definition of “debtor” contained in [Section 1502](#), and not also the requirements of [Section 109](#). As noted above, [Section 1502](#) defines a debtor “[f]or the purposes of this chapter” as “an entity that is the subject of a foreign proceeding.” This argument also fails, as we cannot see how such a preclusive reading of [Section 1502](#) is reconcilable with the explicit instruction in [Section 103\(a\)](#) to apply Chapter 1 to Chapter 15.

But even if the definition of “debtor” in [Section 1502](#) blocked application of [Section 109](#) within Chapter 15, that would not support the conclusion that OA need not satisfy [Section 109](#) in order for Foreign Representatives to obtain recognition of the foreign proceeding. Given its broadest reading, [Section 1502](#) still could not affect the definitions contained within Chapter 1 because [Section 1502](#)'s scope is expressly limited to “this chapter” (Chapter 15). It follows that the definitions of “foreign proceeding” and “foreign representative,” which both occur within Chapter 1, would not be affected. [11 U.S.C. § 101\(23\)–\(24\)](#). Because they both require a debtor, as discussed above, OA would need to satisfy

[Section 109](#) in order to meet the requirements contained within Chapter 15 that rely upon those definitions.

The definition of “debtor” in [Section 1502](#), however, does not block application of [Section 109](#) within Chapter 15. Chapter 1 contains a definition of “debtor” introduced by the phrase, “[t]he term ‘debtor’ means.” [11 U.S.C. § 101\(13\)](#). [Section 109\(a\)](#) does not say that the term debtor “means” anything. Rather, it adds a requirement for the kinds of “person” that “may be a debtor under this title.” [11 U.S.C. § 109\(a\)](#). [Section 1502](#), like [Section 101](#), introduces its definition with the phrase “the term—(1) ‘debtor’ means.” This linguistic parallelism makes clear that [Section 1502](#) supplants [Section 101](#)—*i.e.*, it supplants the definition of debtor within the context of Chapter 15—but it does not supplant requirements for “a debtor under this title” not included in the definition. *Cf.* [DiCristina](#), 726 F.3d at 99 (“‘When an exclusive definition is intended the word ‘means’ is employed.’” (internal brackets and ellipsis omitted) (quoting [Groman v. Comm'r of Internal Revenue](#), 302 U.S. 82, 86, 58 S.Ct. 108, 82 L.Ed. 63 (1937))).

The Foreign Representatives' proposed interpretation also fails because it would render [Section 109\(a\)](#) meaningless. They argue that what debtor “means” in Chapter 15 supplants a requirement placed on a debtor “under this title.” But consistency would then require that what a debtor “means” in Chapter 1 would have the same effect. The result would be that [Section 109\(a\)](#) would have no application under any circumstances because the definition in Chapter 1 applies generally. This violates the “most basic interpretive canon[]” requiring us to interpret statutes such that “no part will be inoperative or superfluous.” [Mary Jo C.](#), 707 F.3d at 156. Foreign Representatives' argument, therefore, must be incorrect.

Finally, Foreign Representatives offer no explanation as to why, if Congress wished to exclude Chapter 15 from the reach of [Section 109\(a\)](#), it did not say as much. Congress' silence is particularly inexplicable in light of the fact that Congress did expressly restrict the application of [Section 109\(b\)](#) to Chapter 15 by removing a prohibition on application to foreign insurance companies. [11 U.S.C. § 1501\(c\)](#) (“This chapter does not apply to—(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in [section 109\(b\)](#).”).

*250 ^[15] We would end our “plain meaning” analysis here. However, Foreign Representatives argue that the context and purpose of Chapter 15 support their reading of the statute. A properly limited contextual analysis of statutory language is encompassed within the ambit of a textual analysis. *See In re Application of N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 406 (2d Cir.2009) (“[W]e examine the text of the statute itself, interpreting provisions in light of their ordinary meaning and their contextual setting.”); *United States v. Magassouba*, 544 F.3d 387, 404 (2d Cir.2008) (“In determining whether statutory language is ambiguous, we ‘reference the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.’” (internal ellipsis omitted) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997))).

Such an analysis, however, supports application of [Section 109\(a\)](#) to Chapter 15. Congress amended Section 103 to state that Chapter 1 applies to Chapter 15 at the same time as it enacted Chapter 15. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, [Pub.L. No. 109–8, §§ 801–02, 119 Stat. 23](#). This strongly supports the conclusion that Congress intended Section 103(a) to mean what it says, namely, that Chapter 1 applies to Chapter 15. *Cf.* *United States v. Battista*, 575 F.3d 226, 234 (2d Cir.2009) (“[W]hen two sections 17 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)).

Foreign Representatives argue that application of [Section 109\(a\)](#) to Chapter 15 would be inconsistent with [11 U.S.C. § 1528](#) and [28 U.S.C. § 1410](#). [Section 1528](#) states 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.” Foreign Representatives argue that the necessary implication is that a foreign main proceeding may be recognized even when there are no assets in the United States—*i.e.*, [Section 109\(a\)](#) does not apply to Chapter 15 proceedings.

This argument fails, however, because [Section 109\(a\)](#) requires “a domicile, a place of business, or property in the United States.” [Section 1528](#), therefore, is more restrictive than [Section 109](#). It follows that there is nothing contradictory or disharmonious about applying [Section 109\(a\)](#) to Chapter 15 and then further requiring that [Section](#)

[1528](#) is met before a case under another chapter of [Title 11](#) may be commenced.

Foreign Representatives come closer to the mark with their argument that [28 U.S.C. § 1410](#) provides a venue for Chapter 15 cases even when “the debtor does not have a place of business or assets in the United States.” This venue statute, however, is purely procedural. Given the unambiguous nature of the substantive and restrictive language used in [Sections 103](#) and [109](#) of Chapter 15, to allow the venue statute to control the outcome would be to allow the tail to wag the dog.

Finally, Foreign Representatives argue that the purpose of Chapter 15 would be undermined by application of [Section 109\(a\)](#). “[W]e look first to the text and structure of the statute as the surest guide to congressional intent.” *Mary Jo C.*, 707 F.3d at 168 (internal quotation marks omitted). Here, Chapter 15 contains an express purpose section that states: “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) international *251 cooperation; (2) “greater legal certainty for trade and investment”; (3) “fair and efficient administration of cross-border insolvencies”; (4) “protection and maximization of the value of the debtor's assets; and (5) facilitation of the rescue of financially troubled businesses.” [11 U.S.C. § 1501\(a\)](#). None of these stated purposes are dispositive as they could all be accomplished with or without imposition of [Section 109\(a\)](#). It is true that the Model Law does not contain an express requirement akin to [Section 109\(a\)](#), *see generally* United Nations Commission on International Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment*, available at <http://www.uncitral.org/pdf/english/texts/insolven/insolvency-e.pdf> (last accessed Dec. 9, 2013), but the Model Law also states that “a State may modify or leave out some of its provisions” *id.* at Part 2 ¶ 12. 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\(a\)](#). This is especially true where other provisions of federal law provide the relief that the Model Law was intended to provide. Here, [28 U.S.C. § 1782\(a\)](#) provides for discovery in aid of foreign proceedings without any requirement akin to [Section 109\(a\)](#).³ Congress, therefore, may have intended to limit the relief provided by Chapter 15 because it knew that additional relief was already [13](#) available outside of Chapter 15.

CONCLUSION

Because we find that  11 U.S.C. § 109(a) applies to the debtor in a foreign main proceeding under Chapter 15 of the Bankruptcy Code, we **VACATE** and **REMAND** to the Bankruptcy Court for further proceedings consistent with this opinion.

We direct the Clerk of Court to forward copies of this opinion to Congress following the specified protocol adopted by the Judicial Conference.

All Citations

737 F.3d 238, 70 Collier Bankr.Cas.2d 1203, 58 Bankr.Ct.Dec. 251, Bankr. L. Rep. P 82,554

Footnotes

- * The Honorable William F. Kuntz, II, of the United States District Court for the Eastern District of New York, sitting by designation.
- 1 “ ‘While the pecuniary interest formulation is an often used and often useful test of standing in the bankruptcy context, it is not the only test.’ ”  *In re DBSD N. Am., Inc.*, 634 F.3d at 89 n. 3 (quoting  *In re Zarnel*, 619 F.3d at 162). “Instead, even absent a direct pecuniary interest in the litigation, a *public* interest may also give a sufficient stake in the outcome of a bankruptcy case to confer appellate standing.”  *In re Zarnel*, 619 F.3d at 162 (internal quotation marks omitted); see  *id.* (finding that the U.S. Trustee’s “responsibility to represent and protect the public interest affords it a substantial interest in, and therefore standing to proceed with” an appeal). In this case, however, no party argues that the pecuniary interest test is not appropriate.
- 2 [Section 1520](#) prescribes the “effects of recognition of a foreign main proceeding,” which include permitting a foreign representative to “operate the debtor’s business and ... exercise the rights and powers of a trustee,” limiting the transfer and control of the debtor’s property within the United States, and invoking  [11 U.S.C. § 362](#)’s automatic stay provisions. The automatic relief imposed by [Section 1520](#) stands in contrast to the discretionary relief that “may be granted upon recognition” pursuant to  [11 U.S.C. § 1521](#). That discretionary relief includes enlarging the automatic stay, enforcing additional restrictions on transfer of the debtor’s property, the taking of discovery, and granting relief that “may be available to a trustee,” with some exceptions.  [11 U.S.C. § 1521\(a\)](#).
- 3 Indeed, we note that Foreign Representatives have commenced an action under [28 U.S.C. § 1782](#) and have entered into a stipulation with Drawbridge and others calling for production of documents within sixty days of October 3, 2013. See Stip. & Order, *In re Application of Barnet*, 13–Misc.–214, Dkt. No. 32 (S.D.N.Y. Oct. 4, 2013).