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THIRD-PARTY RELEASES ALIVE AND WELL IN CHAPTER 15 — CREATIVE MANEUVER OR COMITY?

Recent filings suggest that companies are using Chapter 15 recognition proceedings as a means to obtain relief not otherwise available under U.S. bankruptcy law. While U.S. bankruptcy courts appear to be aware of such maneuvers and the potential for abuse, recent decisions reflect a continued willingness to recognize foreign decisions as a matter of comity. As detailed herein, foreign entities should be aware of such a strategy but be wary of its limitations and potential scrutiny.

By Douglas E. Spelfogel, Derek Wright, and Karen Lou*

In the wake of *Harrington v. Purdue Pharma L.P.*, there has been an uptick in companies seeking to use creative tools to implement third-party releases through Chapter 15 recognition proceedings. Recent bankruptcy court decisions reflect a general willingness to recognize foreign proceedings as a matter of comity, even when doing so contravenes U.S. bankruptcy principles. However, some courts have cautioned that there is the potential for abuses where foreign entities seek to maneuver within the existing framework to obtain relief not otherwise authorized under U.S. law.

Foreign entities seeking relief through a judicially supervised restructuring often undergo a two-step process: *First*, they initiate a proceeding in a foreign court. *Second*, they seek recognition from a U.S. bankruptcy court through Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq*. (the "Bankruptcy Code"). If successful, a restructuring plan approved by a foreign court becomes enforceable in the U.S.

Foreign bankruptcy law diverges substantively from U.S. bankruptcy law in many respects; a plan that a U.S. bankruptcy court would reject as a matter of law could be easily approved in a foreign court. For example, where U.S. bankruptcy courts are prohibited from recognizing nonconsensual third-party releases, many foreign courts are free to do so.

Because recognition under Chapter 15 provides entities with important benefits and is routinely granted, Chapter 15 has become an increasingly popular option for foreign entities seeking to enjoy the best of two jurisdictions.

AN OVERVIEW OF CHAPTER 15 PROCEEDINGS

Chapter 15 proceedings are not standalone proceedings. They are ancillary to foreign proceedings headquartered abroad, intended to facilitate cooperation between U.S. and foreign courts in cross-border

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matters.[1] Consistent with that goal, Chapter 15 proceedings allow debtors to obtain access to certain protections of U.S. bankruptcy law — such as broadening discovery and the automatic stay — while extending comity and preserving deference for foreign bankruptcy principles.[2]

In addition to providing access to the protections under U.S. bankruptcy law, Chapter 15 recognition empowers U.S. bankruptcy courts to enforce a foreign court's orders. In this way, Chapter 15 gives a foreign, court-approved plan the full force and effect of U.S. law.[3] To determine whether to recognize a foreign proceeding, bankruptcy courts look for three statutory requirements set forth in Section 1517 of the Bankruptcy Code: (1) the presence of a foreign main or foreign nonmain proceeding; (2) the foreign representative applying for recognition is a person or body; and (3) the petition is not manifestly contrary to public policy (the "Public Policy Exception"). Related to the Public Policy Exception, bankruptcy courts consider whether relief would be available under U.S. law and whether principles of international comity would be implicated.

In practice, these requirements are applied formulaically and generally leave little room for judicial discretion.[4] Chapter 15 is usually granted.[5]

RECENT TRENDS IN CHAPTER 15 PROCEEDINGS

In the Chapter 15 context, bankruptcy courts frequently address the enforceability of foreign-approved plans that in some way conflict with U.S. bankruptcy law. Recent decisions show that when this is the case, courts remain willing to recognize foreign proceedings. Courts, however, are catching on to patterns where debtors initiate a foreign proceeding in favorable jurisdictions before seeking "quick" enforcement in the U.S. through Chapter 15.

The Enforceability of Nonconsensual Third-Party Releases

Last year, the Supreme Court decided *Harrington v. Purdue Pharma L.P.*, which resolved a long-standing circuit split on the permissibility of nonconsensual third-party releases in Chapter 11 bankruptcy proceedings.[6] The Court focused its analysis on Bankruptcy Code Section 1123(b)(6), which states a Chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of this title."[7] Invoking *ejusdem generis*, the Court limited the scope of Section 1123(b)(6)'s catchall provision and concluded that bankruptcy courts are, with few exceptions, barred from "discharg[ing] the debts of a nondebtor without the consent of affected nondebtor claimants."[8]

However, the *Purdue* Court took pains to instruct that the holding be construed narrowly.[9] Because *Purdue* makes no mention of Chapter 15 or principles of comity, *Purdue* did not necessarily foreclose the approval of nonconsensual third-party releases in the Chapter 15 context.

Nonconsensual third-party releases remain enforceable in many foreign jurisdictions, including Mexico and Brazil.

In *In re Crédito Real*, a Mexican Court approved a restructuring plan that included a nonconsensual third-party release provision.[10] The debtor's foreign representative then commenced a Chapter 15 proceeding

[1] 11 U.S.C. § 1525.

[2] *Id.* § 1520(a).

[3] *Id.* § 1509.

[4] Jesse Hallock, *Time Out: The Problematic Temporality of COMI Analysis in Chapter 15 Bankruptcy Cases in the Second Circuit*, 2015 COLUM. BUS. L. REV. 1074, 1078 (2015).

[5] *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 125 (Bankr. S.D.N.Y. 2007) ("The [Chapter 15] determination is a formulaic one.").

[6] 603 U.S. 204 (2024).

[7] *Id*. at 205.

[8] *Id.* at 218.

[9] *Id*. at 206.

[10] *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).

in the U.S. Bankruptcy Court for the District of Delaware.

The United States International Development Finance Corporation (the "DFC") objected. The DFC conceded that *Purdue*'s holding applied only to Chapter 11 proceedings, but nonetheless urged the court to apply *Purdue*'s *ejusdem generis* approach in interpreting whether third-party release provisions are enforceable under Chapter 15.[11] The DFC also argued that enforcement of such a provision would be manifestly contrary to public policy.[12]

Over these objections, Judge Horan explained that statutory canons are no more than rules of thumb, and the Bankruptcy Code makes clear that Chapter 15's dominant goal is to bolster cooperation and comity with foreign courts.[13] He observed differences between Section 1123(b)(6) and its Chapter 15 counterpart in Section 1521(a)(7): section 1521(a)(7) is a broader grant of power because it enables a court to grant any additional relief "of the kind that is available to a trustee," not just relief that is not "inconsistent with the applicable provisions of this title."[14] Merely conflicting with U.S. bankruptcy law does not make a foreign plan violative of public policy; he reasoned that the *Crédito Real* plan and the related Mexican proceedings were fair, and in any event, denial of recognition on public policy grounds should be used sparingly.[15] Bankruptcy Code Section 1506 instructs courts to decline recognition only if doing so would be "manifestly" contrary to public policy, a high standard that weighs in favor of recognition.[16] Regarding nonconsensual third-party releases specifically, Judge Horan explained that *Purdue* carved out exceptions for when such releases remain enforceable.[17] Thus, "similar relief" under U.S. law was available, again weighing in favor of recognition.[18]

Similarly, in another case decided weeks later, in *In re Odebrecht*, the Bankruptcy Court for the Southern District of New York granted recognition of a Brazilian Court-approved restructuring plan over a similar objection from the United States Trustee.[19] The *Odebrecht* plan necessarily involved a nonconsensual third-party release upon recognition.[20] Judge Glenn drew a distinction between assessing whether such releases are proper under Chapter 11 and assessing whether the bankruptcy court should recognize a foreign court order under Chapter 15.[21] He saw the court's role as the latter and focused his analysis on principles of comity.[22]

Judge Glenn discussed much of Judge Horan's reasoning in *Crédito Real* and concluded that (1) Section 1521(a)(7) is a broader grant of power than Section 1123(b)(6) is and (2) principles of comity weighed in favor of recognition.[23] In addition to echoing Judge Horan's analysis, Judge Glenn cited a string of pre-*Purdue* case law to support the proposition that because the two types of proceedings are fundamentally different, limitations in the Chapter 11 context are not always carried over to the Chapter 15 context.[24] Judge Glenn also agreed with Judge Horan's public policy analysis, noting that the *Purdue* Court itself acknowledged policy considerations both weighing in favor of and against nonconsensual third-party releases.[25] As Judge Horan did in *Crédito Real*, Judge Glenn concluded that the *Odebrecht* plan's nonconsensual third-party release was insufficient to fall within the narrow scope of Section 1506's Public Policy Exception.[26]

Together, *Crédito Real* and *Odebrecht* reveal bankruptcy courts' inclination to interpret *Purdue* narrowly — such that nonconsensual third-party releases remain enforceable under Chapter 15 — and their continued willingness to extend comity to foreign courts.

Presence of a Foreign Main Proceeding

As mentioned above, one of the statutory requirements for Chapter 15 recognition is the presence of a foreign main or nonmain proceeding. Regardless of

[11] *Id*. at *13.

[12] *Id*.

[13] *Id*. at *6.

[14] *Id*. at *10.

[15] *Id*.

[16] *Id.* at *7.

[17] *Id*. at *15.

[18] *Id*. at *10.

[19] *In re Odebrecht Engenharia e Construção S.A. – Em Recuperação Judicial*, No. 25-10482 (MG), 2025 WL 1156607 (Bankr. S.D.N.Y. April 21, 2025).

[20] *Id*. at *2.

[21] *Id*. at *12.

[22] *Id*. at *7.

[23] *Id*. at *10-11.

[24] *Id*. at *12.

[25] *Id*. at *11.

[26] *Id*. at *12.

whether the terms of a foreign restructuring plan are consistent with U.S. bankruptcy principles, in order to obtain recognition, a debtor must show that there is a foreign main or nonmain proceeding.

In another significant case invoking Chapter 15, in *Mega NewCo*, the debtor was a newly formed and wholly owned subsidiary of a Mexican financial services company.[27] The parent company did not dispute the fact that the subsidiary was incorporated in England for the sole purpose of restructuring.[28] Because the subsidiary was registered in England, the English Court exercised jurisdiction over the foreign proceeding.[29]

Therein, the English Court approved a restructuring plan in which the parent company would be able to restructure notes issued pursuant to an indenture agreement governed by New York law.[30] In the U.S., this maneuver would have been impermissible absent the consent of 100% of the noteholders, which would have presented a significant obstacle for the parent company.[31] Alternatively, U.S. bankruptcy law would have allowed the parent company to restructure the notes without hitting the 100% consent benchmark, but with a catch — the parent company would also need to address its other liabilities.[32] By initiating proceedings in the English Court, the parent company avoided complications that would have arisen under both Mexican and U.S. bankruptcy law.

After securing approval from the English Court, the parent company sought Chapter 15 recognition from the Bankruptcy Court for the Southern District of New York. Judge Michael E. Wiles took issue with the fact that although the debtor was registered in England, it did not conduct any "regular market-facing activities" there.[33] Judge Wiles conceded that registration alone was sufficient to meet the standard for a foreign main proceeding but noted the "significant risks in the structure."[34] He explained that "Chapter 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 [center of main interests.]"[35]

Notwithstanding these concerns, Judge Wiles ultimately recognized the English proceeding because he concluded that doing so "involve[d] no . . . frustration or thwarting of creditor rights."[36] Had the plan implicated creditor rights, Judge Wiles would have considered whether the affected creditors made any objection (in *Mega NewCo* there were no creditor objections) before granting recognition on the grounds that there is a foreign main proceeding.[37]

TAKEAWAYS

Recent bankruptcy court decisions reflect a general willingness to recognize foreign proceedings, even when doing so contravenes U.S. bankruptcy principles. As such, foreign entities should remain strategic in their choice of venue when initiating insolvency proceedings. However, as *Mega NewCo* shows, courts are becoming more aware of shortcomings and potential for abuses in the Chapter 15 analysis, particularly regarding ambiguities around the definition of "foreign proceeding." Judge Wiles did not go so far as to change the Chapter 15 framework, but *Mega NewCo* shows that courts are becoming increasingly alert to how foreign entities maneuver within the existing framework. ■

[27] *In re Mega Newco Ltd.*, No. 24-12031 (MEW), 2025 WL 601463 (Bankr. S.D.N.Y. Feb. 24, 2025).

[28] *Id*. at *3.

[29] *Id*.

[30] *Id*. at *1.

[31] *Id*.

[32] *Id*.

[33] *Id.* at *2.

[34] *Id.* at *3.

[35] *Id.*

[36] *Id.* at *4.

[37] *Id*.