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Third-Party Releases Through Chapter 15—Loophole or Comity?

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By: Douglas Spelfogel, Derek Wright, Karen Lou

Recent filings suggest that companies are leveraging recognition proceedings under Chapter 15 of the U.S. Bankruptcy Code to obtain relief they couldn't achieve under foreign or U.S. bankruptcy law alone. Noteworthy decisions highlight a judicial openness—grounded in comity—to recognize foreign proceedings in the U.S. that include third-party releases. Japanese companies eyeing this path should weigh the potential benefits against the risks of perceived abuse.

1. An Overview of Chapter 15 Proceedings

Chapter 15 facilitates cross-border insolvency cases by allowing foreign debtors to access U.S. bankruptcy protections through recognition of foreign proceedings.[1] They are not standalone proceedings, but rather ancillary to foreign proceedings that enable U.S. courts to enforce foreign court orders and extend protections under U.S. bankruptcy or other law such as the automatic stay.[2]

To grant recognition, U.S. bankruptcy courts look for three 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. These are evaluated formulaically, and Chapter 15 is usually granted.[3]

2. Emerging Trends

In *Harrington v. Purdue Pharma L.P.*, the U.S. Supreme Court barred nonconsensual third-party releases under Chapter 11 of the Bankruptcy Code absent specific statutory authority. The ruling, however, did not address Chapter 15 or comity-based recognition—leaving space for U.S. courts to enforce foreign restructuring plans that include such releases—many of which still permit them.

That flexibility was underscored in *In re Crédito Real*, where a Mexican court-approved restructuring plan included nonconsensual third-party releases.[4] The United States International Development Finance Corporation objected to Chapter 15 recognition of that plan on public-policy grounds, urging the application of *Purdue*.[5] U.S. Bankruptcy Judge Horan disagreed, ruling that Chapter 15 prioritizes

comity[6] and that Bankruptcy Code section 1521(a)(7) provides broader authority than its Chapter 11 counterpart does.[7] He further noted that Section 1506's public-policy exception must be applied narrowly: only when a foreign judgment is manifestly contrary to U.S. principles.[8]

A similar ruling followed in *In re Odebrecht*. There, Judge Glenn recognized a Brazilian Court-approved restructuring plan under Chapter 15 despite objections from the United States Trustee.[9] He distinguished Chapter 11 from Chapter 15, emphasizing comity, and agreed with Judge Horan's rationale, noting §1521(a)(7) offers broader discretion than §1123(b)(6) in Chapter 11.

By contrast, *In re Mega NewCo* tested the limits of this deference to foreign plans under Chapter 15. The debtor was a newly formed and wholly owned subsidiary of a Mexican financial services company.[10] The parent company did not dispute the fact that the subsidiary was incorporated in England for the sole purpose of restructuring.[11] By initiating proceedings in the English Court, the parent company avoided complications that would have arisen under both Mexican and U.S. bankruptcy law. Judge Wiles granted recognition—but not without hesitation. He noted the subsidiary had no "regular market-facing activities" in England[12] and suggested the outcome might differ if creditors had objected.[13] This statement suggests that U.S. courts may draw the line for U.S. recognition where such tactical maneuvers suggest abuse, making recognition contrary to U.S. public policy and inappropriate under Chapter 15.

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Footnotes

[1] 11 U.S.C. § 1525.

[2] *Id.* §§ 1520(a); 1509.

[3] *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.").

[4] *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).

[5] *Id.*

[6] Id. at *6.

[7] Id. at *10.

[8] Id. at *7.

[9] *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).

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

[11] Id. at *3.

[12] Id. at *2.

[13] Id. at *4.

Related Attorneys

Douglas Spelfogel
Partner
dspelfogel@jenner.com
+1 212 891 1615

Derek Wright
Partner
dwright@jenner.com
+1 312 840 7262

Karen Lou
Associate
klou@jenner.com
+1 212 407 1778

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