NORTON ROSE FULBRIGHT

International Restructuring Newswire

A quarterly newsletter from the global restructuring team at Norton Rose Fulbright

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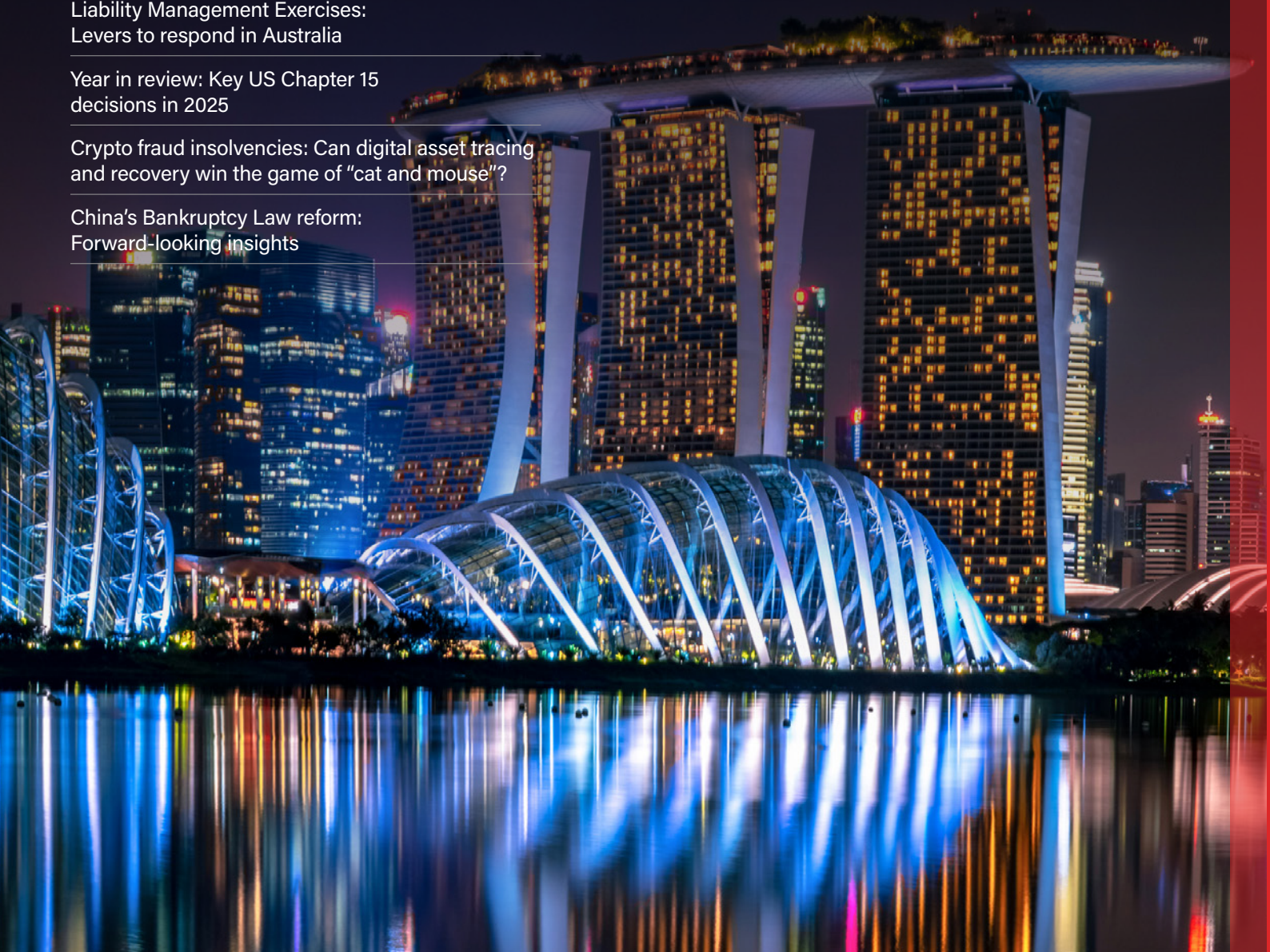
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To our clients and friends:

Welcome to our second quarter issue of Norton Rose Fulbright's *International Restructuring Newswire.* Our global team of lawyers are delighted to highlight some of the key issues facing restructuring professionals.

Regional conflicts and geopolitical volatility are reshaping the global economic outlook in real time. With supply chain disruptions rippling out from the Strait of Hormuz, these are challenging and uncertain times for businesses. Staying informed on global restructuring developments is crucial and our global team of restructuring lawyers are on hand to deliver the strategic guidance and advice needed to navigate these precarious economic conditions.

In this edition, we examine cryptocurrency fraud insolvencies and consider whether digital asset tracing is a game changer for insolvency practitioners and creditors alike.

In the US, we look back on the most significant Chapter 15 cases of 2025 and reflect on the lessons for future restructurings.

In Australia, we analyze the implications of limited liability management exercises on the Australian restructuring market, including pre-insolvency 'drop down' transactions

Finally, we reflect on China's bankruptcy law reform. The draft law has significant implications for foreign creditors, with reform focusing on cross-border insolvency cooperation, substantive consolidation of corporate groups, the interface between out-of-court restructuring and in-court reorganization, creditor protection, post-termination recovery mechanisms, and debt resolution for individuals who are jointly liable for corporate debts.

We hope you find these articles useful and we look forward to seeing many of you at INSOL London 2026.



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Liability management exercises: Levers to respond in Australia

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Introduction

In the Q1 2025 edition of *International Restructuring Newswire*, our colleagues offered an English perspective on liability management exercises (LMEs) occurring in the United Kingdom.

These tactics are occurring in the United Kingdom and Europe more broadly downstream from leveraged buyouts and extensive private equity activity that was maximized by a low-interest rate environment. The change in economic cycle is now leading highly leveraged companies to turn to LMEs to restructure their capital structures.

LMEs utilize the flexibility in contracts agreed between debtors and creditors and creditors *inter se* to reprioritize debt claims to the benefit of participating creditors. In overseas markets, these flexible contractual arrangements originated in high-yield bond documentation and were initially and continue to be favourable to debtor companies as negotiated by them or their private equity sponsors.[1]

A key benefit is the contractual right to transfer collateral to *unrestricted subsidiaries* (that is, those outside the borrower group of companies). This is referred to as the 'drop-down' and gained infamy in the restructure of the United States clothing retailer J. Crew.[2] The German building company Pfleiderer GmbH has also recently demonstrated how the designation of a subsidiary as an *unrestricted subsidiary* and subsequent transfer of collateral can be paired with a 'double dip',[3] which is when creditors lend new money to an *unrestricted subsidiary* that then on-lends all or some of the proceeds back into the restricted group with the participating lender ending up with:

- A direct claim against the *unrestricted subsidiary*.
- An indirect claim through the intercompany loan both supported by guarantees or security, as permitted by the documents.

Australia has seen low interest rates and an uptick in leveraged buyouts. A notable example was the Brookfield take-private of the Healthscope Group in 2019, which is now the subject of the same change in economic cycle. However, our local contractual arrangements have remained tighter for debtors with less margin for LMEs due to continued market adherence to the standard form documentation of Asia Pacific Loan Market Association (APLMA). This may be the result of a limited, less diverse creditor pool, including high-yield bonds remaining a rarer feature of the capital stack.

This article has been prepared in anticipation of LMEs becoming a component of the restructuring toolkit in the Australian market. The key players are already here in Australia which suggests that wider adoption of contractual flexibility is just downstream. Banks and other lenders operating at this end of the Australian market therefore need to be aware of these tactics and should have regard to the legal issues that may be relevant to prevent disadvantage.

Our focus is the use of the 'drop-down' by companies outside of the zone of insolvency. This is necessary to demonstrate the point that these transactions are susceptible to reversal even if undertaken before the hardening periods that operate in respect of the voidable transaction claims that can be brought in accordance with Section 588FF of the *Corporations Act 2001* (Cth).

This article is therefore premised on the existence of a 'drop-down' mechanism in a facility agreement governed by Australian law and/or entered into by an Australian obligor (or an obligor subject to the jurisdiction of Australian insolvency law) and considers the following legal issues:

- Whether contract law could protect a disadvantaged creditor.

1 See Vincent Buccola and Greg Nini. 'The Loan Market Response to Dropdown and Uptier Transactions' (2024) 53(2) Journal of Legal Studies 7.

2 See Jared Ellias and Narine Lalafaryan, 'The Global Law of Debt' (Research Paper No. 21/2025, Faculty of Law, University of Cambridge, December 2025).

3 Bianca Boorer and Adel Awak, 'Pfleiderer bondholders organise in response to carve-out', *9fin* (9 January 2026).

- Whether the transaction could constitute defrauding the disadvantaged creditor under Section 37A of the *Conveyancing Act 1919* (NSW) and State equivalents.

Framing of the mechanism and tightening features

Before delving into the analysis, we note that in reviewing operative 'drop-down' clauses in European high-yield, 'cov-lite' documentation, they can have the following associated features:

- A right to designate existing or newly established members of the corporate group as an *unrestricted subsidiary*.
- A basket that allows the debtor to move a funds up to a certain value to an *unrestricted subsidiary* without breaching financial covenants.
- A limitation on the types of assets that can be transferred to an *unrestricted subsidiary*.
- A restrictive asset sale or affiliate transaction covenant.

The risk of a debtor utilizing the 'drop-down' could be limited by prohibiting the designation of *unrestricted subsidiaries* and tightening the asset disposal covenant. However, despite the controversies associated with the 'drop-down' since J. Crew, the mechanism has remained in loan documentation albeit with some variations. For instance, creditors have agreed on:

- A limitation as to the size of the *basket* according to the last earnings period.
- A limitation as to the transfer or sale of intellectual property or business units.
- Restricting the asset sale or affiliate sale covenant to purchases for fair market value and with a minimum 75 percent cash consideration.
- Requiring disposal proceeds to be applied in debt reduction.

The below analysis considers whether the inclusion of these features may address any applicability of the considered Australian law.

Contractual analysis

A 'drop-down' mechanism may attract principles of contract law that provide a cause of action to a disadvantaged creditor. Depending on the contractual arrangements and the nature of the dealings between the parties, this activity could found claims for breach of the following:

- The implied obligation to act reasonably in relation to contractual rights that are capable of significantly affecting another party's rights.[4]
- The implied duty of cooperation, under which each party is obliged to do all that is reasonably necessary on its part to enable the other party to obtain the benefit of the contract.[5]
- A limited implied duty of good faith, noting this only applies with respect to 'relational contracts' that is unlikely to include financing documentation.[6]

The drafting and construction of the 'drop-down' mechanism would inform a Court's consideration of whether these duties and obligations may have been breached by the borrower. This includes whether there are any fetters, conditions or constraints attached to the mechanism, including an express obligation to exercise powers in 'good faith' or 'reasonably' in the contract or any specific features of the 'drop-down' such as a basket limitation or an asset sale covenant.

While protective principles exist in the United Kingdom and United States, noting the latter has an implied duty of good faith applicable to all contracts, these have not yet been directly tested in the context of a 'drop-down' transaction and therefore no insights can be gleaned from offshore as to how they may be interpreted in an Australian context. However, there are claims that continue to be filed in these jurisdictions as LMEs become increasingly deployed by sponsors and borrowers and it is therefore necessary to watch this space closely.

4 *Mineralogy Pty Ltd v Sino Iron Pty Ltd* (No 6) [2015] FCA 825; 329 ALR 1 at [1027].
5 *Secured Income Real Estate (Australia) Ltd v St Martins Investments Pty Ltd* (1979) 144 CLR 596 at 607–608.
6 *Commonwealth Bank of Australia v Barker* (2014) 253 CLR 169 at [107].

Statutory analysis

Disadvantaged creditors could also have the availability of statutory recourse. Section 37A of the *Conveyancing Act 1919* (NSW) (Conveyancing Act), including its State equivalents, is not reliant on the occurrence of bankruptcy or insolvency and can therefore apply at all points in time and to a range of transactions.

> **37A Voluntary alienation to defraud creditors voidable**
>
> (1) Save as provided in this section, every alienation of property, made whether before or after the commencement of the Conveyancing (Amendment) Act 1930, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced.
>
> ...
>
> (3) This section does not extend to any estate or interest in property alienated to a purchaser in good faith not having, at the time of the alienation, notice of the intent to defraud creditors.

Key aspects of the provision have been construed as follows:

- *Meaning of 'alienation of property'*: The word 'alienation' in section 37A should be given "the widest possible application" as it "encompasses every conceivable means whereby property might be removed from the reach of a person's creditors".[7]
- *Meaning of 'intent to defraud creditors'*: The term 'defraud' means "delay, hinder or defraud".[8]
- *Meaning of 'creditors'*: " ... "creditors" ... has been held on more than one occasion to mean present or future creditors, so that if a person fears that his or her activities may generate creditors and puts property out of the reach of such possible persons, the transfer of the property can be attacked under the section ...".[9]
- *The requisite 'intent'*: An "actual and real intention"[10] to defraud has been rejected, and it has been found "that it was unnecessary to show that the debtor wanted creditors to suffer a loss or that the debtor had a purpose of causing loss: it was necessary to show the existence of an intention to hinder, delay or defeat creditors and in that sense to show that accordingly the debtor had acted dishonestly ...".[11]
- *Interpretation of dishonesty*: "The intent to defraud to which s 37A refers involves dishonesty, albeit that that dishonesty may be constituted by an intent to delay or hinder creditors without involving "a desire to 'cheat' or 'swindle' those prejudiced".[12]
- *The requisite intent need not be the sole or dominant one*: The High Court has determined that the provision "does not postulate a mixture of motives from which there must be extracted what is identified as a predominant intent to defraud".[13]
- *Inferences of intent*: It is recognized that it will be "easier to infer a dishonest intention if the conveyance were voluntary than if it were made for consideration"[14] and the Courts have recognised further situations in which they are likelier to infer the requisite intent including where:
  - The alienation is made for no consideration by a person in financial difficulties.[15]
  - The alienation is made in haste or proximately to one or more events indicating financial stress on the part of the transferor.[16]
- *Can apply to more than the debtor*: It has been found that others who act "collusively" with a debtor may be held accountable under the provision,[17] and that a fraudulent transfer "need not occur solely by reason of acts by the fraudulent debtor".[18]

As per Subsection 37A(3), extracted above, the provision does not extend to any estate or interest in property alienated to a purchaser in good faith not having, at the time of the alienation, notice of the intent to defraud creditors. In cases in which a borrower is transferring collateral to an *unrestricted subsidiary,* this exception is unlikely to be available.

An analysis involving Section 37A must therefore focus on the period leading up to the relevant alienation, and consider all the surrounding circumstances that speak to the mind of the transferor at that point in time. These inquiries should also focus on the discovery of facts that indicate intent and whether the alienation was carried out in order to 'delay, hinder or defeat' claims that could be made by existing or future creditors.

7 *Hall v Poolman* [2007] NSWSC 1330 at [550].
8 *Marcolongo v Chen and Another* (2011) 242 CLR 546 at [19].
9 *Chen v Marcolongo* (2009) 260 ALR 353 at [180].
10 *Marcolongo v Chen and Another* (2011) 242 CLR 546 at [24].
11 Ibid at [32].
12 *Saba v Plumb and Another (2018)* 19 BPR 38,401.
13 *Marcolongo v Chen and Another* (2011) 242 CLR 546 at [57].
14 (2011) 242 CLR 546 at [25].
15 See *Cannane (D M) v J Cannane Pty Ltd (in liq)* (1998) 153 ALR 163 at [13].
16 See *PT Garuda Indonesia Ltd v Grellman* (1992) 107 ALR 199 at 208.
17 *Hall v Poolman* (2007) 215 FLR 243; [2007] NSWSC 1330 at [550].
18 *Zreika v Royal* (2019) 271 FCR 65 at [303].



In overseas markets, the 'drop-down' mechanism has been designed to effect the transfer of collateral in order to obtain further financing. While existing lenders may be called upon to provide that further financing, there will invariably be other creditors disadvantaged by the activities (otherwise the participating creditors could consent to variations to the existing facility agreement without having to enjoin the 'drop-down'). If those circumstances were to occur in Australia, it is arguable that the borrower could be engaging in activities to 'delay, hinder or defeat' the claims of non-participating creditors.

To ultimately determine the applicability of Section 37A, this would require factual inquiries into the drafting and construction of the 'drop-down' mechanism, how and when the mechanism was negotiated and agreed between the parties and whether the disadvantaged creditors contemplated the effect of the relevant clauses. A stricter asset sale covenant, or other associated features to tighten the mechanism, may be a counterweight to any risk of the applicability of the provision. That said, dishonesty is still dishonesty and even consideration may not sufficiently deter a claim under the provision.

If successful, a claim under Section 37A would reverse the 'drop-down' mechanism. It is worth noting, however, that additional remedies may be necessary in circumstances in which the transferred collateral was used by the *unrestricted subsidiary* to grant security rights to new or existing creditors.

Conclusion

Academic research in the United States and United Kingdom has focused on the effectiveness of LMEs. A recent study questioned their utility with more than 80 percent of the analyzed transactions resulting in defaults (including formal insolvency appointments) within three years.[19] It could be that these are just a passing fad that are only delaying the inevitable or they could become an entrenched part of the restructuring toolkit.

As interest rates remain elevated in Australia, sponsors and debtors will continue to face challenges and turn to considering restructuring options. Such options may depend on the allowances available in the transaction documents. If Australian banks and other lenders are involved in transactions that already contain a 'drop-down' mechanism or it is proposed in future, this article is intended to provide awareness of the avenues that could thwart an attempt to disadvantage or seek redress after the activity has occurred.

19 Mark J. Roe and Vasile Rotaru, 'Liability Management's Limited Runway: Corporate Restructuring Today' (January 20, 2026) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6103369> (accessed 9 March 2026).

Year in review: Key US Chapter 15 decisions in 2025

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Under Chapter 15 of the United States Bankruptcy Code, a foreign debtor, trustee, liquidator or similar person (that is, a "foreign representative") may obtain recognition of a foreign bankruptcy, insolvency, liquidation or restructuring proceeding (that is, a "foreign proceeding"). Upon recognition, a foreign representative will generally be able to obtain a host of relief from a US court to "aid" the foreign proceeding, including a stay of actions against the debtor or its assets in the US, turnover of assets, discovery and orders enforcing a foreign court's orders or a foreign restructuring plan in the US.

In 2025, there were 58 new Chapter 15 cases filed (after factoring in cases that were jointly consolidated for procedural purposes). These Chapter 15 cases were filed in connection with foreign proceedings pending in: Australia (2), Austria (1), Bermuda (2), Brazil (8), British Virgin Islands (2), Canada (20), Cayman Islands (6), England (2), France (1), Germany (1), Hong Kong (1), Korea (1), Luxembourg (1), Malta (1), Mauritius (1), Mexico (1), New Zealand (1), Panama (1), Peru (1), Singapore (1), Sweden (1), Switzerland (1), and the United Kingdom (1). The majority of the Chapter 15 cases were filed in the Southern District of New York (20) and the District of Delaware (12). The remaining 26 cases were filed across 13 other districts.

This article highlights some of the significant decisions issued in 2025:

- First, we discuss the Delaware and New York bankruptcy courts' decisions enforcing nonconsensual third-party releases in Chapter 15 cases.
- We then discuss three decisions in which bankruptcy courts concluded that US companies may have the center of their main interests in Canada.
- We turn next to a New York bankruptcy court's decision recognizing a Brazilian restructuring proceeding after finding that the Dutch and Spanish members of a Brazilian group had their center of main interests in Brazil.
- We then discuss a Texas court's decision denying recognition to a Maltese liquidation after finding that the debtor lacked sufficient connections to Malta.
- Next, we describe a New York bankruptcy court's consideration of a proposal by a newly formed company to enforce an English restructuring of New York law-governed notes issued by its Mexican parent company under Chapter 15 in the US.
- We also discuss a decision that analyzes the scope of the public policy exception to Chapter 15 relief.
- Finally, we discuss the New York bankruptcy court's decision elaborating on the standard for terminating Chapter 15 recognition.

US Courts may enforce foreign third-party releases under Chapter 15

In June 2024, the US Supreme Court held that Chapter 11 of the Bankruptcy Code does not currently permit nonconsensual releases of claims by creditors of a debtor against a non-debtor outside of the asbestos context. Foreign laws, however, may permit these so called "third-party releases" against non-debtors. Prior to the Supreme Court's ruling, US bankruptcy courts generally enforced such foreign third-party releases under Chapter 15. Following the Supreme Court's ruling, there was some question as to whether US courts would continue to enforce foreign third-party releases. In 2025, two bankruptcy courts issued decisions distinguishing their authority to enforce foreign third-party releases under Chapter 15 from the limitations imposed under Chapter 11.

In a matter of first impression, the Bankruptcy Court for the District of Delaware held that a US court may enforce nonconsensual third-party releases contained in a foreign restructuring plan under Chapter 15. *In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.*, 670 B.R. 150 (Bankr. D. Del. 2025). Following a liquidity crisis and competing liquidation and bankruptcy proceedings in Mexico and the US, Crédito Real, S.A.B. de C.V., SOFOM, E.N.R., its Mexican liquidator, and an ad hoc group of unsecured creditors entered into a restructuring support agreement, pursuant to which Crédito Real would restructure its liabilities through a Mexican *concurso* plan.

The Concurso Plan provided for, among other things, the monetization of Crédito Real's assets and the distribution of proceeds to creditors in accordance with the priority scheme set forth under Mexican law. In addition, the Concurso Plan contained exculpatory and release provisions that protected certain parties that played a role in negotiating the restructuring, including Crédito Real's former directors and officers, the ad hoc group, the indenture trustee for certain notes and the Mexican liquidator.

Having obtained the requisite votes from creditors in favor of the Concurso Plan, Crédito Real submitted the plan to the Mexican court for approval. Over the objection of the United States International Development Finance Corporation (DFC), the Mexican court approved the plan. Thereafter, Crédito Real's foreign representative filed a petition under Chapter 15 of the Bankruptcy Code with the Delaware Bankruptcy Court seeking recognition of the Mexican proceeding and an order enforcing the Concurso Plan, including the releases.

The Delaware court, noting that the request for recognition of the Mexican proceeding was unopposed, summarily granted the request for recognition of the proceeding, finding that the foreign representative had satisfied all of the Chapter 15 recognition requirements. However, the DFC objected to the request to enforce the plan in the US on two principal grounds.

First, according to the DFC, the nonconsensual release of non-debtors as provided in the Concurso Plan is not authorized under either Section 1507 or Section 1521 of the Bankruptcy Code, which are the two sections that govern relief after recognition. In particular, those sections authorize relief concerning a debtor and its relationship to its creditors. They do not, according to the DFC, address a third party's relationship with a creditor and thus, would not be the basis of enforcing a nonconsensual release under Chapter 15. Second, according to the DFC, the nonconsensual release was "manifestly contrary" to US public policy and thus should not be approved under the Bankruptcy Code. The bankruptcy court rejected both arguments.

The bankruptcy court noted that Section 1521 permits a court, upon recognition of a foreign proceeding, to grant "any appropriate relief, including" seven specific examples. Given that the examples followed the word "including," the court found that the list was illustrative and not exhaustive. Thus, the absence of nonconsensual releases from the list was not dispositive. The court further noted that Section 1521(a)(7) expressly allows a court to grant any "additional relief that may be available to a trustee" with limited exceptions. Therefore, the court was not limited to relief concerning a debtor and its relationship to its creditors, as argued by DFC and could grant relief available to a trustee: "By establishing boundaries, Congress allowed relief that does not exceed those boundaries." As the exceptions mentioned in Section 1521(a)(7) do not include nonconsensual third-party releases and given existing precedent authorizing nonconsensual releases in Chapter 15 cases, the US court concluded that Section 1521 authorized the enforcement of such releases.

The US court further noted that Section 1507(a) of the Bankruptcy Code authorizes a court to grant "additional assistance to a foreign representative." In general, relief under Section 1507 must be "consistent with principles of comity" that would satisfy certain factors set forth in Section 1507(b) including: (1) just treatment of creditors, (2) protection of US creditors against prejudice and inconvenience, (3) prevention of preferential or fraudulent transfers, and (4) distributions of proceeds of a debtor's property substantially in accordance with the priority scheme set forth in the US Bankruptcy Code. By including these factors, "Congress again established boundaries for court in granting relief under Chapter 15 and directed courts on how to determine if it is appropriate to grant relief." Such boundaries were not limited to the debtor or its relationship to its creditors.

Moreover, it was not limited to relief available in a US bankruptcy case. Because the Mexican proceeding satisfied the applicable factors set forth in Section 1507(b) and enforcement was consistent with principles of international comity, the court held that it had authority to enforce the nonconsensual releases under Section 1507.

Section 1506 of the Bankruptcy Code provides that a court may refuse to take any action that "would be manifestly contrary to the public policy of the United States." According to the US court, despite the Supreme Court's prohibition of nonconsensual releases in Chapter 11 cases, the enforcement of nonconsensual releases in a Chapter 15 case is not manifestly contrary to US public policy. The public policy exception is narrow and only applies where the (1) "the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections," or (2) "recognition would impinge severely a US constitutional or statutory right." Here, neither the Mexican proceeding nor the plan implicated either concern.

As US courts have frequently done, the court concluded that the Mexican proceeding offered a full and fair process before a court of competent jurisdiction "under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries." In addition, it concluded that Mexican law provides for due process and an opportunity for creditors to object to a plan. Here, the bankruptcy court found that the DFC actively participated in the Mexican proceeding where it objected to the plan. Given that the releases were permissible under Mexican law and the product of arms' length negotiations among the debtor and stakeholders, including creditors, and that the plan was approved by the requisite majorities of creditors in a process that provided creditors with an opportunity to be heard, the court concluded that the Mexican proceeding was procedurally fair.

In addition, the US bankruptcy court concluded that the releases did not impinge on any fundamental US constitutional or statutory right. While the Supreme Court has held that the Bankruptcy Code does not currently authorize nonconsensual third-party releases in Chapter 11 cases, Congress has expressly permitted them in the asbestos context and may later permit them in other contexts. Therefore, it cannot be said that enforcing a nonconsensual release would be manifestly contrary to US public policy. "Lack of specific availability in US courts does not equate to manifest contrariness to US public policy, especially where, as here, the contested relief is available in other contexts and could be made available more broadly by a simple act of Congress."

Accordingly, the Delaware bankruptcy court issued an order enforcing the Mexican concurso plan, including the nonconsensual third-party releases in the US. On 31 March 2026, the United States District Court for the District of Delaware affirmed the bankruptcy court's decision concluding that "[i]t is well settled that US bankruptcy courts can give effect to foreign orders in recognized foreign proceedings pursuant to the authority granted in Chapter 15, even when those orders contain relief unavailable under US law."

Shortly after the *Crédito Real* decision, the United States Bankruptcy Court for the Southern District of New York issued a similar ruling in the Chapter 15 case of *In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial,* 669 B.R. 457 (Bankr. S.D.N.Y. 2025). In June 2024, following two prior restructurings, a subset of the OEC Group, one of the largest construction companies in the world, filed a Brazilian recuperação judicial (RJ) proceeding to implement a comprehensive restructuring of the OEC Group's liabilities under a Brazilian plan of reorganization.

Following a "resounding vote in favor of the RJ Plan," a Brazilian court approved the RJ Plan, which provided, among other things, that the payment under the plan would result in a discharge of certain claims against the OEC debtors and their officers, directors, agents, employees and representatives. Thereafter the debtors filed a Chapter 15 petition seeking recognition of the RJ proceeding and an order enforcing the RJ plan with the New York bankruptcy court. The Office of the United States Trustee objected to the proposed order enforcing the RJ plan on the basis that, among other things, it contained "impermissible nonconsensual third-party releases."

In particular, the UST argued that the provision in the proposed Chapter 15 order that enjoined all persons and entities from "taking any action…that is inconsistent with, in contravention with, or would interfere with or impede the administration, implementation and/or consummation of the RJ Plan, the Brazilian Confirmation Order or the terms of this Order" was an impermissible nonconsensual third-party release. The bankruptcy court questioned whether the provision was a third-party release at all because the third parties were identified "on the plaintiff's side of the 'v.'" and not necessarily protected by the injunction. However, assuming the provision was a third-party release, the court, citing the *Crédito Real* decision and existing precedent under Chapter 15 and its predecessor, former Section 304 of the Bankruptcy Code, found that it could issue such a release under Chapter 15.

Unlike in the *Crédito Real* case, there was no third-party release in the RJ Plan or in the Brazilian order confirming the RJ plan. The purported release was contained in the Chapter 15 order enforcing the RJ Plan in the US. The court explained that there is no "meaningful difference" between enforcing a foreign plan that contains a third-party release and issuing a recognition order that includes such a release: As long as statutory requirements of Section 1507 or 1521 were satisfied, the court could grant the release unless doing so would be manifestly contrary to US public policy.

The court was satisfied that the statutory requirements discussed in *Crédito Real* were also satisfied in this case. In particular, the third-party release would enable the distribution of the OEC debtor's estates under the RJ Plan in a manner that enabled the just treatment of all creditors substantially in accordance with US law. Moreover, for the same reasons as discussed in *Crédito Real*, third-party releases were not manifestly contrary to US public policy. Indeed, the bankruptcy court noted that US courts have historically enforced non-consensual third-party releases in support of a foreign restructuring plan under Chapter 15 and its predecessor. Therefore, the bankruptcy court concluded that it could issue an order effectively enjoining creditors on a nonconsensual basis from taking actions against non-debtors in the US even where the foreign plan did not contain such a nonconsensual release or injunction.

In 2025, other courts similarly extended comity to foreign third-party releases. However, many of those requests were unopposed and did not result in a written opinion. For example, the US Bankruptcy Court for the Southern District of Texas extended comity to the third-party releases provided in the UK Restructuring Plan of Fossil (UK) Global Services. Consequently, it appears that, at least for the time being, nonconsensual third-party releases are available in the US under Chapter 15.

II. Court finds that US Companies can have their center of main interests in Canada

Under Chapter 15, a US bankruptcy court may recognize a foreign proceeding only if it is a "foreign main proceeding" or a "foreign nonmain proceeding." A foreign main proceeding is a foreign proceeding pending in the country where the debtor has the center of its main interests or "COMI." Chapter 15 does not define a debtor's COMI, but it provides a rebuttable presumption that a debtor's registered office is its COMI. A foreign nonmain proceeding is one pending in a country where the debtor has an "establishment," which is defined as "any place of operations where the debtor carries out a non-transitory economic activity." Courts will generally determine a debtor's COMI (or establishment) as of the Chapter 15 petition date. In 2025, there were several instances in which a US court concluded that the COMI of a US company was or likely was in Canada.

Prior to the hearing on its petitions for recognition of Canadian receivership proceedings, the foreign representative of Giftcraft Ltd. and its affiliates asked the United States Bankruptcy Court for the Southern District Court of New York for provisional relief, among other things, staying actions against certain of Giftcraft debtors, some of which were incorporated in the US, and their assets in the US.

The Office of the United States Trustee opposed the request as to the US debtors. According to the UST, the US debtors did not have their COMI or an establishment in Canada and therefore they were not entitled to relief under Chapter 15. Instead, the UST argued that the debtors should pursue relief under either Chapter 7 or 11 of the Bankruptcy Code. The New York court disagreed with the UST and concluded that the US debtors likely had their COMI in Canada and granted the provisional relief over the UST's objection. *In re Giftcraft*, Case No. 25-11030 (MG), 2025 WL 1583480 (Bankr. S.D.N.Y. 4 June 2025).

Section 1519(a) of the Bankruptcy Code permits a bankruptcy court to grant "relief [that] is urgently needed to protect the assets of the debtor or the interests of creditors." Such provisional relief is typically subject to traditional injunction standards. Under the traditional injunction standards, a court may grant a provisional stay in a Chapter 15 case if: (i) there is a likelihood of success on the petition for recognition; (ii) there will be "imminent irreparable harm" to the debtor if provisional relief is not granted; (iii) the "balance of harms" tips in favor of the movant; and (iv) "public interest"



weighs in favor of granting provisional relief. Further, a court may grant relief under Section 1519 "*only* if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected" as required by Section 1522 of the Bankruptcy Code.

The court granted provisional relief to the debtors that requested the relief, including the US debtors, finding that they had satisfied the traditional injunction standards. First, the court determined that the foreign representative was likely to obtain recognition of the receivership as a "foreign main proceeding." The court noted that the receivership proceeding "is a judicial proceeding overseen by a foreign (Canadian) court, authorized under various relevant Canadian statutes, including the Bankruptcy and Insolvency Act and the Courts of Justice Act, and pursuant to which the receiver has been provided the 'authority to operate or manage the debtor's business in place of the existing management,' and potentially also 'shut down the business' or sell the assets and custody of the debtor," and was therefore a foreign proceeding as defined under the Bankruptcy Code. Moreover, each of the debtors, including the US debtors, had their COMI in Canada. Giftcraft Canada was registered in Canada and thus, its COMI was presumed to be Canada. All employees of Giftcraft Canada were Canadian, further supporting a finding of COMI in Canada. The other three Giftcraft debtors were incorporated in the US. However, the evidence supported finding Canada to be their COMI.

The order appointing the receiver, who was based in Canada, provided that they were "vested with all property, assets, and undertakings of [the US debtors] with broad power and authority over such assets and the management and operation of [the US debtors'] business." According to the court, the restructuring activities of the receiver suggested that the US debtor's COMI was Canada as of the time of the filing of the Chapter 15 petitions. Therefore, the court found that the foreign representative would likely succeed on the merits of the petition for recognition of the Canadian proceedings as foreign main proceedings.

The court noted that irreparable harm will typically occur in cross-border insolvencies "where local actions could hinder the orderly process of a foreign proceeding and the goal of the fair distribution of assets." The presence of assets and creditors in the US and a legal demand by one creditor was sufficient to establish "irreparable harm" that could diminish the debtors' value to the detriment of creditors. The court further found that the "balance of harms" favored the Giftcraft debtors, and that provisional relief would be in the "public interest" because it would redound to the benefit of US creditors by maximizing assets for distribution "minimiz[ing] interjurisdictional inconsistencies."

In so ruling, the court rejected the UST's allusion to the similarities between the Giftcraft case and the 2025 decision by the United States Bankruptcy Court for the District of Delaware in *In re Black Press Ltd. et al.* (Case No. 24-



10044) (Bankr. D. Del., Feb. 8, 2024), where the Delaware court declined to find that the US-based debtors had their COMI in Canada. The *Giftcraft* court noted that unlike the Giftcraft debtors, the Black Press US-based debtors operated "independently" of the Canadian debtors. Shortly after granting provisional relief in *Giftcraft*, the court granted recognition to the receiverships as foreign main proceedings, finding that the US debtors' COMI was indeed Canada.

Approximately three months after the court granted recognition to the *Giftcraft* debtors' receiverships as foreign main proceedings, the United States Bankruptcy Court for the Southern District of New York granted provisional relief to another group of debtors, including US companies, finding that it was likely that each of the debtors had their COMI in Canada and thus that their Canadian proceedings would likely be recognized as foreign main proceedings. *In re Iovate Health Sciences Int'l Inc.*, 673 B.R. 516 (Bankr. S.D.N.Y. 2025). The *Iovate* court observed that "[t]his is the third recent Chapter 15 case before this Court in recent months which has involved Canadian entities in a Canadian insolvency proceeding where one of the entities in the debtor group was an American corporation and the Court determined that COMI of the American companies were in Canada."

Iovate Health Sciences International Inc. and its affiliates, Northern Innovations Holding Corp. and Iovate Health Sciences USA Inc., commenced restructuring proceedings in Canada under Canada's Bankruptcy and Insolvency Act and filed Chapter 15 petitions seeking recognition of the Canadian proceedings as foreign main proceedings. Two of the debtors were registered in Canada. Iovate Health Sciences USA was registered in the US. In addition, the Iovate debtors requested provisional relief in the form of a stay of actions against the debtors and their assets in the US pending the hearing on recognition. The request was unopposed. Nevertheless, as it did in *Giftcraft*, the court applied the traditional injunctive standards in determining whether to grant the relief.

In this instance, the court was satisfied that the debtors would succeed on the merits of their petitions for recognition of the Canadian proceedings:

First, the court found that each of the Iovate debtors was eligible to be a debtor under Section 109(a) the Bankruptcy Code which, according to the United States Court of Appeals for the Second Circuit, is a prerequisite to recognition of a foreign proceeding under Chapter 15. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013).[1] All of them had property in the US in the form of a retainer with their New York-based counsel, which courts have routinely held is sufficient to satisfy Section 109(a)'s eligibility requirement. Moreover, Iovate USA also had funds in a separate account in a New York bank, which further supported its eligibility as a debtor.

1 Section 109(a) states that "only a person that resides or has a domicile, a place of business, or property in the United States. . . may be a debtor" in a US bankruptcy case. 11 U.S.C. § 109(a).

Second, according to the court, the Canadian proceeding under Canada's Bankruptcy and Insolvency Act "is a judicial proceeding overseen by a foreign (Canadian) court, authorized under various relevant Canadian insolvency statutes, including the Bankruptcy and Insolvency Act, which is collective in nature, and subjects the Debtors' assets and affairs to the supervision of the foreign court" and is likely a foreign proceeding as defined under the Bankruptcy Code.

Third, each of the debtors had their COMI in Canada. Two of the three debtors were registered in Canada. Thus, their COMI was presumed to be Canada, and there were no facts that rebutted the presumption. The third debtor, Iovate USA, was incorporated in Delaware, and thus its COMI was presumed to be the US. However, the evidence demonstrated that its COMI was likely Canada. In particular, Iovate USA was "run out of Ontario, along with the rest of the Iovate group," and the Iovate debtors "share management, headquarters, and accounting/finance/HR functions, all of which occur in Canada." Thus, it was likely that Iovate USA's Canadian proceeding would be recognized as a foreign main proceeding. As in *Giftcraft*, the court concluded that there was a significant risk of irreparable harm resulting from creditor enforcement action absent provisional relief. Further, according to the court, the balance of harms and public interest favored granting provisional relief because the relief sought protected the debtors' estates and benefitted creditors by preserving the value of the debtors' estates and facilitating cooperation with the Canadian court. Accordingly, the court granted provisional relief. Weeks later, the court granted recognition to the Canadian proceedings as foreign main proceedings.

In 2025, other courts similarly recognized Canadian proceedings involving US companies, finding that their COMI was in Canada. For example, the United States Bankruptcy Court for the Southern District of New York overruled the UST's objection and recognized the Canadian restructuring proceedings of three US companies as foreign main proceedings, finding that each of their COMIs were in Canada. *In re Li-Cycle Holdings*, Case No. 25-10991-pb, Oral Bench Ruling (Bankr. S.D.N.Y. 25 May 2025) (Dkt. No. 114). In coming to this conclusion, the court noted that the US debtors had no US operations as of the petition date. According to the court, the debtors' only activity was to participate in the Canadian proceeding, which included managing a sale process and raising post-petition financing. Moreover, the US debtors were managed by the officers and board of the Canadian debtor, which were almost entirely located in Canada. *Li-Cycle* (transcript filed at Dkt. No. 122).

III. Court finds the COMI of Spanish and Dutch companies to be in Brazil

InterCement Brasil S.A. and certain affiliates filed Brazilian recuperação judicial (RJ) proceedings to restructure certain liabilities, including notes issued by InterCement Financial Operations B.V., a special purpose financing vehicle incorporated in the Netherlands. Thereafter, the debtors, including the Dutch special purpose financing vehicle and InterCement Trading e Inversiones S.A., a company incorporated in Spain, filed Chapter 15 petitions with the US Bankruptcy Court for the Southern District of New York, seeking recognition of the RJ proceedings as foreign main proceedings. The bankruptcy court granted recognition over the objection of certain noteholders, finding that the COMI of the debtors, including the Dutch and Spanish companies, was Brazil. *Intercement Brasil S.A.*, 668 B.R. 802 (Bankr. S.D.N.Y. 2025).

The court noted that the COMI of the Dutch entity was presumed to be the Netherlands. Moreover, there were facts that would support finding the COMI somewhere other than Brazil. For example, the Dutch entity held board meetings in the Netherlands, it almost exclusively engaged with Dutch contractors, and it had minimal connections to Brazil. However, the court emphasized that where "a debtor is a special purpose financing vehicle (SPV) with no operations other than managing relationships with creditors and paying off obligations on behalf of a larger corporate parent, the debtor's COMI should be determined by the location of the corporate nerve center." In addition, the Dutch entity's activities prior to the Chapter 15 filing date bolstered the court's conclusion that the Dutch entity's COMI as of the filing date was Brazil. In particular, as of that date, the Dutch entity's activities were limited to repayment of the notes, which entailed participating in a prior restructuring proceeding and meditation in Brazil. In contrast, there were "no restructuring activities with the capacity to materially impact [the Dutch entity's] ability to conduct its business operations occurred in the Netherlands during this timeframe." Thus, according to the court, the Dutch entity's active participation in Brazil established "conclusively" that Brazil was its COMI as of the Chapter 15 filing date.

The court reached the same conclusion regarding the Spanish entity on similar grounds. The court noted that the Spanish entity guaranteed debentures issued by two debtor affiliates. Consequently, its primary business activity at the time of the Chapter 15 filing was restructuring its obligations under the debentures, "which predominantly occurred in Brazil." In

particular, the Spanish entity actively participated in a prior restructuring proceeding and meditation in Brazil. Despite its COMI being presumed to be Spain, the court concluded that the factual circumstances were sufficient to rebut the presumption and demonstrated that the Spanish entity's COMI was Brazil.

IV. Bankruptcy Court denies recognition to Maltese foreign proceeding

Geden Holdings, Ltd., a Malta-registered shipping company, was the target of a "windup application" by certain creditors in Malta. Upon that application, a Maltese court ordered the dissolution and winding up of Geden and appointed a liquidator for Geden in 2017. Approximately a year later, the liquidator resigned from his position with the Maltese court's approval. In 2023, the Maltese court appointed a second liquidator for Geden, who thereafter filed a Chapter 15 petition for recognition of the Maltese liquidation with United States Bankruptcy Court for the Southern District of Texas.

A creditor objected, arguing that the liquidator failed to show that Geden's COMI was Malta. The bankruptcy court ultimately denied the Chapter 15 petition, finding that the liquidator failed to demonstrate that Geden had its COMI or an establishment in Malta as of the filing of the Chapter 15 petition. *In re Geden Holdings, Ltd*., Case No. 25090138, 2025 WL 2484883 (Bankr. S.D. Tex. Aug. 28. 2025).

The court began its analysis by noting that it was undisputed that (1) the Maltese proceeding was a "foreign proceeding," (2) the liquidator was a "foreign representative," and (3) all of the procedural requirements for recognition had been satisfied. The only issue to determine was whether the Maltese proceeding was a "foreign main proceeding" or a "foreign nonmain proceeding," which would require it to determine whether the debtor had its COMI or an establishment in Malta, respectively.

Geden was registered in Malta. Thus, Malta was presumed to be Geden's COMI. However, "Geden's complicated operational history" prevented the court from relying on the presumption. Instead, the court had to examine the relevant facts. According to the court, the determination must be made as of the petition date for the Chapter 15 case, and that "consideration of Geden's entire operational history and/or COMI determination based on the date of the initiation of the Maltese Proceeding is not the proper inquiry for the Court." Because Geden had essentially ceased operating in 2017, the only operations that could reasonably make Malta Geden's COMI would be the actions of the Second Liquidator, who worked in Malta.

The Court reviewed the factual record and determined that the Second Liquidator had not engaged in enough "material activities" to establish Geden's COMI in Malta. Indeed, the majority of the liquidator's activities appeared to be focused on litigation in the US. He did not, for example, pay taxes on behalf of Geden in Malta, convene meetings of Geden's creditors in Malta, or contact any of Geden's former directors or officers in Malta. In sum, the liquidator's activities in Malta were insufficient to demonstrate that Malta was Geden's COMI, and therefore the proceeding could not be recognized as a foreign main proceeding.

In addition, there was insufficient evidence to demonstrate that Geden had an establishment in Malta. There was no evidence that Geden had a place of operations or was conducting any business in Malta as of the Chapter 15 Petition Date. The court noted that the definition of an establishment required a "showing of a local effect on the marketplace, more than mere incorporation and record-keeping and more than just the maintenance of property." Here, the liquidator had failed to make such a showing. Therefore, the Maltese proceeding could not be recognized as a foreign nonmain proceeding.

V. US Court enforces UK restructuring of US Notes issued by a Mexican company

Facing a novel structure, the United States Bankruptcy Court for the Southern District of New York recognized an English proceeding of a company formed for the purpose of restructuring the debts of its Mexican parent as a foreign main proceeding and issued an order enforcing its scheme of arrangement in the US. *In re Mega Newco Ltd.*, Case No. 24-12031(MEW), 2025 WL 601463 (Bankr. S.D.N.Y. Feb. 24, 2025). However, the New York court expressed serious concerns that this structure could be abused in future cases.

Operadora de Servicios Mega, S.A. De C.V., SOFOM, E.R. ("Parent"), a financial services company incorporated and based in Mexico, issued certain notes governed under New York law. Facing liquidity concerns, Parent had to restructure its obligations, including the New York notes. However, Parent could not restructure the New York notes outside of a bankruptcy case without the unanimous consent of all of the holders, which was not possible given that Parent could not negotiate with some of the holders who were subject to sanctions by the US, EU, UK or individual EU member states.

Parent created Mega New Limited ("Newco"), a wholly owned subsidiary incorporated under the laws of England and Wales, which agreed to become an obligor under the New York notes. Newco thereafter proposed a scheme of arrangement under English law, pursuant to which holders of the New York notes would receive either cash payments from Parent or equity in the Parent in exchange for the New York notes. Holders that were entitled to vote on the scheme unanimously approved its terms, including releases against Parent, and the English court issued an order sanctioning the scheme. Newco effectively conducted a "surgical restructuring" of the New York notes where a traditional bankruptcy case of the Parent would require a court to address all of the Parent's assets and liabilities.

Newco filed a Chapter 15 petition with the New York bankruptcy court, requesting an order granting recognition to the English proceeding and an order enforcing the scheme in the US. The New York court noted that Newco had only engaged in restructuring activities and those were conducted in England. However, those activities were insufficient to find that Newco had an establishment in England, which is a prerequisite to concluding that the English proceeding was a foreign nonmain proceeding.

According to the court, restructuring activities alone are insufficient to demonstrate that a debtor has an establishment. "If restructuring activities alone were sufficient, then any proceeding in which a debtor sought relief would automatically qualify as a 'foreign nonmain proceeding,' and the requirement of an 'establishment' would be deprived of any meaning." Instead, the New York court found that Newco's COMI was in England. The court noted that Newco was registered in England and therefore its COMI was presumed to be in England. Moreover, there was no evidence to rebut the presumption. Indeed, all of Newco's activities were conducted in England, which supported the conclusion that its COMI was England. Therefore, the court granted recognition to the English proceeding as a foreign main proceeding.

In coming to its conclusion, the court noted that Newco and the structure were created to permit the restructuring of the New York notes issued by the Parent, which was not party to the English proceeding. Moreover, the Parent's COMI was Mexico and not England. However, the New York court was willing to recognize the English proceeding and enforce the English scheme because it would "enable a broader restructuring" and "enhance all parties' recoveries." The court nevertheless cautioned that similar structures could potentially be used to frustrate the legitimate expectations of creditors. In this case, there was no evidence of impropriety. Instead, it appeared that the English proceeding and the scheme were pursued for "laudable objectives."

Critically, no creditor objected to recognition of the English proceeding or enforcement of the scheme. Accordingly, the court concluded, it would be "absurd" for it to "thwart creditors' constructive desires and expectations" by denying Newco's request. Ultimately, the court issued an order granting recognition to the English proceeding and enforcing the scheme in the US.

VI. Court elaborates on public policy exception

Under Chapter 15, a foreign proceeding shall be recognized if: (1) the foreign proceeding is a foreign main or foreign non-main proceeding, (2) the petition for recognition was filed by a foreign representative, and (3) the petition satisfies certain procedural requirements. If all three criteria are satisfied, recognition should be denied only if it would be "manifestly contrary to the public policy of the United States." Last year, the United States District Court for the Southern District of New York affirmed a bankruptcy court's decision granting recognition to a Cayman proceeding and overruling an objection premised on violations of US public policy. *Winczura v. Scott (In re Canterbury Securities, Ltd.)*, Case No. 25 Civ. 2502, 2025 WL 3227681 (S.D.N.Y. Nov. 19, 2025).

Canterbury was an investment firm that became the subject of liquidation proceedings in the Cayman Islands. Following their appointment, the liquidators of Canterbury obtained certain orders and judgments, including a freezing order and a default judgment, against the debtor's founder and former owner. Thereafter, the liquidators filed a petition under Chapter 15 for an order granting recognition to the Cayman liquidation as a foreign main proceeding with the United States Bankruptcy Court for the Southern District of New York. In addition, the liquidators requested orders enforcing the freezing order and authorizing discovery from the founder and former director in the US. The bankruptcy court granted the relief over the objection of the founder/former director, who appealed to the district court. The former director argued that Section 1506 of the Bankruptcy Code required that the court deny the relief requested because granting the relief would bless a "massive fraud," which itself would be manifestly contrary to US public policy.

According to the district court, Section 1506 requires a court to analyze whether (1) "the foreign proceeding was procedurally unfair," and (2) "the application of foreign law or the recognition of a foreign main proceeding under Chapter 15 would severely impinge the value and import of a US statutory or constitutional right, such that granting comity would severely hinder United States bankruptcy courts' abilities to carry out the most fundamental policies and purposes of these rights." Here, there was no evidence that recognition or the relief requested was manifestly contrary to US public policy.

According to the district court, a foreign proceeding would be procedurally fair as long as it met "fundamental standards of fairness." There is no requirement that a foreign proceeding be conducted exactly like a US proceeding. Here, there was no doubt that the Cayman proceedings were procedurally fair. For years, the founder had an opportunity to (and actually did) participate and be heard in the Cayman proceedings. Moreover, "the sophistication of the Cayman legal system reinforced the finding of procedural regularity." Indeed, the founder did not challenge the procedural fairness of the Cayman proceedings.

The founder argued that granting the relief requested would be manifestly contrary to US public policy by enabling money laundering and market manipulation. According to the founder, the Cayman court incorrectly ignored the evidence of another entity's securities fraud in issuing certain orders, which the foreign representative was asking the US court to enforce under Chapter 15. By enforcing the Cayman orders, the US court would be assisting the foreign representative in violating US anti-money laundering laws by allowing the distribution of the product of securities fraud to creditors. The district court rejected such a broad reading of Section 1506, characterizing the objection as an impermissible collateral attack on the Cayman court's judgment. The court emphasized that the founder's recourse was in the Cayman courts. Accordingly, the district court affirmed the bankruptcy court's recognition of the Cayman proceedings and emphasized that the public policy exception set forth in Section 1506 is limited to "exceptional circumstances concerning matters of fundamental importance for the United States."

VII. US Court elaborates on standards for terminating recognition

Chapter 15 of the Bankruptcy Code anticipates that the status of the ancillary foreign proceeding may change during the pendency of a Chapter 15 case. For example, Section 1508 of the Bankruptcy Code requires a foreign representative to promptly notify the US bankruptcy court of "any substantial change in the status of such foreign proceeding." Moreover, Section 1517(d) of the Bankruptcy Code provides that recognition may be modified or terminated if the basis for granting recognition has "ceased to exist." In 2025, the United States Bankruptcy Court for the Southern District of New York denied a foreign representative's request to terminate recognition finding that the status of the foreign proceeding

had not changed sufficiently to justify termination of recognition. *In re Oi S.A.*, 674 B.R. 175 (Bankr. S.D.N.Y. 2025).

Oi S.A. and its affiliates, which operate primarily in Brazil, are one of the world's largest telecommunications services companies. In 2016, certain members of the Oi Group filed their first Brazilian recuperação judicial (RJ) proceeding that resulted in a confirmed RJ plan to restructure certain liabilities in 2018. The Oi Group also filed an ancillary Chapter 15 case in which the court issued an order enforcing its RJ plan in the US. Following confirmation of that plan, the Oi Group continued to face financial distress and filed a second RJ proceeding in Brazil and a second Chapter 15 case in New York in 2023. The first Chapter 15 case was closed at the time of the filing of the second case. The second RJ proceeding resulted in another RJ plan, which the NY bankruptcy court also enforced under Chapter 15 after recognizing the second RJ proceeding as a foreign main proceeding, finding that each of the Chapter 15 debtors had its COMI in Brazil.

Following confirmation of the second RJ plan, the Oi Group continued to face liquidity constraints and could not meet all its debt obligations as they became due. The Oi Group explored different amendments to the RJ plan, but they were insufficient to address the group's outstanding obligations. Further, the Oi Group was prohibited by Brazilian law from filing a new RJ proceeding for five years following confirmation of the second RJ plan, which prevented it from achieving a comprehensive restructuring under Brazilian law. According to the Oi Group, its only remaining option in Brazil was to convert the RJ proceeding to a *falêmcia* (that is, liquidation), but that would be "value-destructive and lead to job losses." As such, the Oi Group was considering restructuring under Chapter 11 of the Bankruptcy Code. However, Section 1528 of the Bankruptcy Code restricts the effects of a Chapter 11 case commenced after recognition of a foreign main proceeding to the debtor's assets that are within the territorial jurisdiction of the US. The foreign representative therefore moved to terminate recognition of the RJ proceeding to allow the Oi Group to pursue a global restructuring under Chapter 11 in the US.

According to the foreign representative, recognition should be terminated under Section 1517 of the Bankruptcy Code because the reasons for recognition no longer existed and the debtors no longer needed further relief under Chapter 15. In particular, the debts outstanding at the time of recognition had been restructured, and the only purpose of the RJ proceeding was to "supervise" the Oi Group. Further, termination would allow the debtors to reorganize under Chapter 11, and no creditors that relied on recognition would be negatively impacted by termination of recognition. According to the foreign representative, termination would maximize value for all stakeholders by ensuring "a fair and orderly alternative to a liquidation." Alternatively, the foreign representative argued that the Chapter 15 case should be dismissed under Sections 305 or 1521 of the Bankruptcy Code. Dismissal of the Chapter 15 cases would allow the Oi Group to pursue a restructuring under Chapter 11, which, according to the foreign representative, would be in the best interest of creditors and the debtors and would be consistent with the purposes of Chapter 15, including the fair and efficient administration of cross-border insolvencies that protects the interest of all stakeholders.

Two creditors objected to the foreign representative's request arguing that the grounds for recognition remain and they would be prejudiced by dismissal because they had relied on the New York court's recognition order when they extended financing to the Oi Group. Moreover, according to the objectors, termination or dismissal would prejudice creditors and offend comity by allowing the Oi Group to file for Chapter 11 and derail the restructuring under the RJ plan. The New York Court disagreed with the foreign representative and refused to terminate recognition or dismiss the Chapter 15 case.

According to the New York court, Section 1517(d) of the Bankruptcy Code "is the exclusive standard governing the modification or termination" of recognition and consists of a three-part test. First, a court must consider whether the grounds for recognition are lacking or have ceased to exist. Second, a court must consider what, if any, prejudice will result to parties that have relied upon recognition. Third, a court must consider whether there are any other reasons to refuse to terminate recognition. In this instance,, the foreign representative had failed to demonstrate that it satisfied the first component of Section 1517(d) (that is, that the grounds for recognition have ceased to exist). The court noted that the debtors' financial condition and the status of the RJ proceeding had changed. However, those changes, including the debtors' deteriorating liquidity and supervisory role of the Brazilian court in the RJ proceeding, were not sufficient to justify terminating recognition. Because the foreign representative failed to demonstrate that the grounds for granting recognition had ceased to exist, the court did not need to analyze the other components of the test.

The New York court denied the motion to dismiss, finding that there is no statutory authority for dismissing a properly-filed Chapter 15 case. In particular, Section 305(a)(2) of the Bankruptcy Code, which allows a court to dismiss or suspend a bankruptcy case if (1) a Chapter 15 petition has been filed and (2) the purposes of Chapter 15 would be best served by such dismissal or suspension, does not allow a court to dismiss or suspend a Chapter 15 case. Instead, Section 305(a)(2) allows a court to dismiss or suspend a plenary US bankruptcy case (for example, a Chapter 11 case) in favor of a foreign bankruptcy case. Further, Section 1521, which allows a court to grant "any appropriate relief" after recognition does not contemplate dismissal. Moreover, relief under Section 1521 could only be granted "where necessary to effectuate the purpose of [Chapter 15] and to protect the assets of the debtor and the interests of creditors."

In this instance, dismissal would conflict with the purposes of Chapter 15. Among other things, the New York court noted that the Brazilian court had previously highlighted that the Chapter 15 case was "essential and important" to the RJ plan. Thus, dismissal would not foster cooperation between the courts or the fair and efficient administration of the RJ plan, two of the key purposes of the RJ plan. In addition, there was no certainty that the Oi Group would file Chapter 11 cases in the US, in which case dismissal would not advance the Chapter 15 objectives of protecting and maximizing a debtor's assets or facilitating the rescue financially troubled business. Thus, the New York denied the motion to dismiss the Chapter 15 case.

VIII. Conclusion

2025 marked the 20th anniversary of the enactment of Chapter 15. Despite the passage of time, US courts continue to analyze many of the traditional issues that the courts faced at the time of its inception, including matters related to COMI and the scope of the public policy exception. The courts, however, are routinely called upon to address novel issues as is evident from the requests to approve nonconsensual third-party releases in Chapter 15 cases discussed above or to clarify the scope of the Section 546(e) safe harbor in Chapter 15 cases (ee *re Fairfield Sentry Ltd.*, 147 F.3d 136 (2d Cir. 2025), holding that Section 546(e) applies extraterritorially in Chapter 15 cases). Only time will tell what interesting issues the courts will encounter in 2026 in the Chapter 15 context.

Crypto fraud insolvencies: Can digital asset tracing and recovery win the game of "cat and mouse"?

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Overview

While technological advancement has brought many benefits to the global economy—driving greater efficiency, productivity, new markets for businesses and cross-border investment and trade—it has also led to greater sophistication in organized crime, particularly the illicit activity of crypto criminal networks.

Cryptocurrency—which continues to gain acceptance worldwide as a valid form of legal tender having all the hallmarks of property—has become an attractive means for hackers and fraudsters to carry out their activities. The opportunity has certainly been ripe for the taking, with crypto becoming a routine part of financial life for everyday investors, businesses, regulators and governments. It is easy to use, relatively seamless and can easily be woven into both legitimate—and illegitimate—financial transactions.

Crypto fraud is typically conducted in one of two ways, as in when fraudsters:

- Establish fake crypto investment platforms and pose as legitimate organizations to manipulate victims into transferring funds.
- Hack legitimate crypto exchanges—gaining access to investors' crypto wallets and stealing their bitcoin and other digital currency, before realizing the assets and laundering the proceeds.

Increasingly, crypto fraud is arising in an insolvency scenario—in circumstances where the perpetrator leaves behind empty shells of interposed entities through which misappropriated funds have been laundered, or where a crypto exchange, having been cleared of its assets, is compelled to enter an insolvency process.

Given the borderless nature of cryptocurrency and its appeal to investors located all over the world, crypto fraud insolvency matters will inevitably be conducted on a cross-border basis. The task for an insolvency practitioner (IP) seeking to trace and recover misappropriated crypto assets or their proceeds is much more difficult than in the case of traditional currency utilizing established banking systems.

Yet a combination of technology and specialist expertise means that cryptocurrency has ceased to be a black hole for investigations and recovery prospects, with IPs now gaining the edge in asset tracing and recovery (ATR) measures, in a constant game of "cat and mouse."

At the same time, no matter how effective ATR technology becomes in an AI-empowered digital age, recovery prospects ultimately depend on a consistent cross-border normative framework—in relation to the adoption of substantive ATR tools such as freezing and constructive trust orders, as well as insolvency regulations relating to recognition and cooperation under the United Nations Commission on International Trade and Law (UNCITRAL) Model Law on Cross-Border Insolvency (MLCBI), applicable law on substantive insolvency principles and the recognition of judgments.

The nature of fraudulent crypto schemes

It is estimated that US$17 billion was stolen in crypto scams and fraud in 2025, with AI-enabled scams around 4.5 times more profitable than traditional scams.[1] These scams have continued to increase in sophistication as the fraud ecosystem becomes more professionalized.

High-yield investment scams (HYIS) and pig butchering scams have, for some time, made up the highest volume of crypto fraud sub-classes.

1 Chainalysis, "Record $17 Billion Estimated Stolen in Crypto Scams and Fraud in 2025 as Impersonation Tactics and AI Enablement Surge", 13 January 2026, available at: https://www.chainalysis.com/blog/crypto-scams-2026/.

In a HYIS, a bogus initial coin offering or other investment "opportunity" is promoted to prospective well-off investors, encouraging them to invest in crypto and promising outsized returns via an online trading platform that does not actually exist. A particularly successful example of this has been Smart Business Corp, a Ponzi scheme targeting Spanish-speaking countries, which added bitcoin to its fake investment portfolio in 2022 and has since received over US$1.5 billion on-chain in transfers from unsuspecting victims.[2]

Pig butchering scams (also known as investment or romance scams) target and build relationships with individuals, convincing them to invest in fraudulent opportunities. To date, they have primarily originated via large scam compounds in Southeast Asia.[3] The International Justice Mission has observed increasing human trafficking tied to these scams, with vulnerable individuals forced to work in scam operations.[4]

Crypto hacking is also lucrative. In this scenario, fraudsters steal the bitcoin or other cryptocurrency owned by clients of crypto services providers (generally a crypto exchange or custodian), before liquidating the assets for cash and using various interposed entities and transfers to "clean" and launder the proceeds.

It is estimated that, in 2025, illicit actors stole US$2.87 billion across 150 distinct hacks and exploits.[5] In February 2025, North Korean hackers executed what so far remains the largest cryptocurrency heist in history, stealing approximately US$1.5 billion worth of digital assets (in the form of digital Ethereum coins) from Dubai-based crypto platform ByBit. The hackers exploited a free storage software product that ByBit used to move Ethereum to another location, coupled with phishing attacks to access control and download malware. It is estimated that at least US$160 million of the funds stolen from ByBit were laundered within the first 48 hours of the attack.[6]

So where does insolvency come into the picture in crypto fraud cases? Where the fraud consists of crypto exchange hacking, the crypto exchange may itself become insolvent after the fraud has taken place. Otherwise, the entities engaging in the illicit activity may become insolvent, as one or more interposed entities used to perpetrate the crypto fraud and launder the illicit proceeds are left as empty shells, seemingly without any trace of funds to meet investors' claims.

Challenges for IPs

IPs seeking to investigate and trace the movement of crypto assets and their proceeds to recover funds for the benefit of defrauded investors are confronted with a difficult task. Unlike traditional financial systems and assets, the decentralized and pseudonymous nature of cryptocurrency and other digital assets can make unravelling a fraudulent scheme seem like a distant prospect.

Further, the borderless footprint of cryptocurrency makes ATR inherently a complex cross-border task. Practitioners are required to navigate a raft of differing legal frameworks for facilitating investigations, the recovery of assets and the enforcement of judgments. There is a need to consider not only local insolvency laws, but also various international treaties and protocols, with the added complication of privacy laws and restrictions on the use of personal data.

There is also the potential for more than one insolvency proceeding to be opened against a debtor in different jurisdictions simultaneously. Indeed, many jurisdictions, such as Singapore, the United States, the United Kingdom and various offshore regions now adopt flexible "connecting factor" jurisdiction tests, meaning that several courts may claim jurisdiction over a particular ATR action at once, and some may assert exclusive or extraterritorial jurisdiction.[7]

Differences in domestic insolvency, civil procedure laws and property laws, along with relevant evidentiary requirements and standards of proof, can also complicate ATR efforts. This includes the basic threshold issue of whether cryptocurrency—and other digital assets—are even "property" and therefore capable of forming part of the insolvency estate available for recovery and distribution to stakeholders.

2 Chainalysis, "Crypto Scan Revenue in 2024: Pig Butchering Grows Nearly 40 percent Year on Year as Fraud Industry Leverages AI and Increases in Sophistication", 13 February 2025, available at: https://www.chainalysis.com/blog/2024-pig-butchering-scam-revenue-grows-yoy/.

3 Ibid.

4 International Justice Mission, "IJM Uncovers Links Between Child Sextortion and Southeast Asia's Scam Compounds", 19 August 2025, available at: https://www.ijm.org/news/ijm-uncovers-links-between-child-sextortion-and-southeast-asias-scam-compounds.

5 TRM Labs, 2026 *Crypto Crime Report*, 28 January 2026, available at: https://www.trmlabs.com/reports-and-whitepapers/2026-crypto-crime-report.

6 Centre for Strategic and International Studies, "The ByBit Heist and the Future of US Crypto Regulation", 18 March 2025, available at: https://www.csis.org/analysis/bybit-heist-and-future-us-crypto-regulation.

7 UNCITRAL, Asset Tracing and Recovery in Insolvency Proceedings, Background Notes (**ATR Notes**), 2025, [15].



There are also differences as to the availability and familiarity with various ATR tools and remedies across jurisdictions, for example discovery orders, injunctive relief and constructive trust remedies. As UNCITRAL has identified:

> ATR measures known and widely used in some [member] States may be unknown, or their use could create tension with public policies, in other [member] States. As a result, some ATR measures might be effective in the domestic context or across only some [member] States and less effective in other settings.[8]

Enhancing ATR prospects

That said, the tracing and recovery of crypto assets by IPs appointed to an insolvent entity involved in a fraudulent scheme (as perpetrator or victim) is by no means hopeless.

Emerging technologies, such as AI-driven data tracing, forensic analytics and blockchain forensics, have provided new breakthroughs in recent times that are now reshaping investigations. IPs are now becoming adept at drawing on a range of expertise—assembling specialist investigation teams comprised of forensic accountants, blockchain tracers, and IT and cyber experts—in seeking to unravel fraudulent schemes.

While, as noted, cryptocurrency offers a greater level of obfuscation potential to perpetrate fraudulent schemes than traditional currency and banking systems, it is not completely anonymous and untraceable. Most blockchains still leave a public record of the wallets involved and the transaction amounts. The core challenge is linking these transactions to real-world entities that can be targeted for the recovery of misappropriated assets.

The technology currently being deployed in ATR efforts in crypto fraud investigations includes:

1. Machine learning and data analytics: AI-powered platforms can analyze substantial volumes of datasets to detect irregular transfers across multiple accounts and unravel hidden assets and relationships between interposed entities.
2. Natural language processing: AI-driven tools, such as SymphonyAI's Financial Crime Prevention Solutions, extract key insights from unstructured data sources to identify asset concealment and fraudulent activities.
3. Blockchain forensics and analysis: Again, AI-powered tools allow investigators to identify digital wallets linked to fraudulent crypto activities and then track the flow of funds on a public blockchain ledger as it moves across various wallets and decentralized finance platforms.

8 Idem, [20].

> Investigators are assisted in this task by cluster analysis, a specialist blockchain forensics tool that groups together wallet addresses likely to belong to the same user and can enable investigators to obtain the user's identity. Transaction graph analysis also assists in mapping out the flow of funds between wallets and identifying patterns of illicit activity replicated across the blockchain.
>
> While fraudsters can obscure the origin and destination of transactions through the use of mixing software such as Wasabi, which jumbles up blockchain data from multiple users, forensic tools can still use the "before and after" to piece together patterns in transaction size, timing and destination, and draw on multi-chain analytics capability to track funds across various blockchains.[9]

However, jurisdictional enforcement challenges remain no matter how sophisticated tracing efforts become.

Apart from efforts to harmonize domestic substantive laws providing for a broad range of ATR tools, the procedural recognition framework under the provisions of the MLCBI can also be of significant assistance. Of particular note, the recognizing court in a cross-border insolvency matter can order a broad range of discretionary relief if it recognizes a foreign proceeding and is satisfied that the interests of creditors and other interested persons, including the debtor, are adequately protected.[10] Discretionary relief could be tailored to support ATR measures, particularly where the local jurisdiction itself provides for ATR tools available to litigants in substantive laws. In that regard, Article 23(1) of the MLCBI states that the court can grant any additional relief that may be available to a representative under the law governing the recognising court.

Further, when applying for recognition of a foreign insolvency process as a foreign main proceeding or a foreign non-main proceeding, the foreign representative may seek relief of a provisional nature if it is "urgently needed to protect the assets of the debtor or the interests of the creditors."[11] This has the potential to extend to provisional ATR measures such as the freezing of assets and the compulsory production of information concerning the debtor's assets and affairs.

As part of the effort to enhance the use of the MLCBI framework in an ATR context, and to also drive greater adoption of substantive recovery tools by legislators, UNCITRAL adopted both a toolkit (ATR Toolkit) and background explanatory notes (ATR Notes) on Asset Tracing and Recovery in Insolvency Proceedings at its 58th Session in Vienna in July 2025.

The adoption of the ATR Toolkit and the ATR Notes came after a four-year deliberation process led by UNCITRAL's Working Group V (Insolvency Law) in which it became evident that adequate ATR tools might not be available in all member States, while access to existing tools, in particular by foreigners, might not be effective and efficient especially given the complexities and difficulties involved in unwinding hidden crypto assets.

The final text of the ATR Toolkit sets out tools and steps that could expedite ATR both domestically and across borders in both physical and digital environments. The ATR Toolkit and the accompanying ATR Notes are non-prescriptive. They are designed to provide a source of information about measures used across jurisdictions to "enable, facilitate and expedite" ATR and to identify common features across States.[12] Some of the ATR tools profiled include provisional measures—such as attachment or garnishment orders, sequestration, embargoes, freezing orders, judicially ordered security interests or liens and seizures—and substantive relief such as *actio pauliana* or constructive trust orders.

The intention of the ATR Toolkit is to influence legislators to adopt these ATR tools in cases where they are lacking in a particular jurisdiction.[13] The text is also designed to enhance court-to-court communiwcation and cooperation and expedite ATR across borders under the existing MLCBI framework. This may lead to both the greater availability of ATR measures across jurisdictions, and costs savings due to a reduction in duplicative hearings on ATR measures in jurisdictions through which assets have been transferred.[14]

9 Quantuma Advisory, "Tracing and Recovering Misappropriated Digital Assets", 17 December 2024, available at: https://www.quantuma.com/insights/tracing-and-recovering-misappropriated-digital-assets.

10 MLCBI, article 22(1).

11 Idem, article 19.

12 ATR Notes, [1].

13 Idem, [1].

14 ATR Toolkit, 12-14.

A key priority going forward should be to encourage greater willingness among recognizing courts to enable foreign representatives to use local ATR tools to pursue misappropriated digital assets. While the ATR Toolkit and the ATR Notes will assist, there is also an opportunity to enhance judicial diplomacy efforts—informal networking, training and education from judges in advanced legal systems with a range of ATR tools (such as the United Kingdom, Singapore, the United States and Australia), and the use of forums such as the Judicial Insolvency Network.

However, the effectiveness and efficiency of ATR could be enhanced even further by the adoption of additional international frameworks beyond the MLCBI. Especially significant is the UNCITRAL Model Law on the Recognition and Enforcement of Insolvency-Related Judgments (MLIRJ). In that regard, while the MLCBI provides a framework for the recognition of, and cooperation regarding, restructuring and insolvency *procedures*, it does not of itself automatically facilitate the recognition of foreign *judgments* arising out of those procedures.

Conflicting positions have been taken by courts in different jurisdictions For example, the United Kingdom's position is that the MLCBI is limited to the procedural aspects of cross-border insolvency and does not govern choice of law rules to enable the enforcement of insolvency-related judgments. This leaves in place default ordinary private international law rules preventing the enforcement of *in personam* judgments against defendants not present in the foreign country where the judgment is entered and who do not submit to the jurisdiction of the court entering the judgment.[15]

In contrast, United States courts have taken the position that the MLCBI *does* provide a basis for the recognition and enforcement of insolvency-related judgments under the discretionary relief provisions in article 21 of the MLCBI.[16]

The MLIRJ is intended to overcome the uncertainty regarding the interpretation of Article 21 of the MLCBI as a means of supporting the recognition and enforcement of insolvency-related judgments and limiting potential challenges to the validity of court orders that may protract and complicate cross-border insolvency recoveries.

While the MLIRJ has not yet been adopted by any nation, its implementation is under active consideration in Singapore. The United Kingdom also still intends to adopt the MLIRJ, although the adoption process appears to have stalled for the time being.

Convergence in substantive insolvency laws is also desirable. Working Group V considered a standalone draft Model Law on Applicable Law in Insolvency Proceedings (Draft Applicable Law) at its 67th Session in Vienna in December 2025, after a consultation process extending more than four years. The Draft Applicable Law text reinforces the application of the *lex fori concursus*—the law of the state where the insolvency proceedings are opened—to all aspects of insolvency proceedings, subject only to limited and clearly defined exceptions.[17] Notably, there is one such exception in the case of avoidance proceedings (which will, necessarily, be required in ATR efforts relating to a fraudulent crypto scheme). Article 6 of the Draft Applicable Law provides that, instead of the *lex fori concursus*, a court may apply the insolvency law of the State where the debtor had its centre of main interests at the time of the conclusion of the transaction giving rise to the relevant act of avoidance. This is on the condition that deference to that law is necessary to protect the legitimate interests of the parties to the transaction.

Also relevant is the work of the United Nations Institute for the Unification of Private Law (UNIDROIT) to facilitate the harmonized legal treatment of digital assets, including cryptocurrency. After an extensive consultation process, the UNIDROIT Principles on Digital Assets and Private Law (UNIDROIT Principles) were adopted by the UNIDROIT Governing Council at its 102nd session in May 2023.

The UNIDROIT Principles comprise legislative guidance and best practices in relation to transactions involving digital assets. They are designed to serve a twofold purpose: to provide clear rules relating to digital transactions, and to encourage States to adopt legislation consistent with the UNIDROIT Principles. The overall objective is to increase predictability in transactions relating to digital assets, which UNIDROIT hopes will lead to reduced costs and increased efficiency.

15 *Rubin v Eurofinance* [2013] 1 AC 236.

16 *In Re Metcalfe & Mansfield Alternative Investments*, 421 BR 685 (Bankr SDNY 2010).

17 Article 5

While the UNIDROIT Principles have a broad scope, including as to the nature and enforceability of security interests over digital assets and general legal issues pertaining to the holding and transfer of digital assets across a variety of commercial use cases, they have a distinct level of importance in an ATR context. Notably, Principle 3(1) expressly states that digital assets can be the subject of proprietary rights. This may mean that, in certain jurisdictions, digital assets could be classified as "property" (or the law reformed to include a new class of property which can accommodate digital assets).

This is significant—insofar as, if implemented by a particular jurisdiction, cryptocurrency would be considered property (or its functional equivalent), such that it could form part of the insolvency estate subject to the control of an IP and recovery for the benefit of investors. This would considerably enhance certainty and efficiency in ATR efforts. As noted above, current debate over the proprietary nature of digital assets can impede and even prevent ATR.

Conclusion

Crypto crime is costing investors tens of billions of dollars every year. It is also becoming a fast-growing area in the cross-border insolvency landscape, as investors scramble to locate their funds within a web of interposed entities used to perpetrate a fraudulent scheme.

Enhanced investigative methodologies and AI-powered forensic tools are increasing the ability for IPs—supported by expert forensics teams—to trace and recover crypto and other digital assets in this scenario. Yet the cat and mouse game can ultimately only be won against crypto criminals through greater regulatory convergence and alignment—both in the adoption of substantive ATR tools in domestic legislation, and in the consistent adoption and implementation of cross-border insolvency norms relating to the recognition of foreign insolvency processes and judgments, mutual assistance and cooperation and substantive insolvency law.

With the level of attention being given to combating cyber crime and digital fraud by global regulators and legislators, and the proactive attitude of courts in supporting cross-border investigations to unwind fraudulent schemes, it is hoped that we will see further advances in ATR processes—and greater prospect of investors receiving some of their funds retuned in an insolvency matter—in the near future.

China's Bankruptcy Law reform: Forward-looking insights

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Introduction

The *Draft Enterprise Bankruptcy Law Amendments* (the Draft) were submitted to the Standing Committee of the National People's Congress for deliberation in September 2025 and have completed the first round of public consultation. With more than 160 new or revised provisions, the Draft makes broad and structural changes to China's insolvency regime. It builds on developments already reflected in judicial practice while also drawing on selected concepts from more developed insolvency frameworks.

Several of the proposed changes are relevant to creditors outside the People's Republic of China (the PRC). This article highlights six areas of the Draft that may have practical significance for foreign creditors: cross-border insolvency cooperation, substantive consolidation of corporate groups, the interface between out-of-court restructuring and in-court reorganization, creditor protection, post-termination recovery mechanisms, and debt resolution for natural persons who are jointly liable for enterprise debts.

1. Improving the framework for cross-border insolvency cooperation

The current *Enterprise Bankruptcy Law* contains only a principle-level provision on cross-border insolvency, which has limited practical utility. In 2021, the Supreme People's Court issued a pilot opinion allowing courts in Shanghai, Shenzhen and Xiamen to recognize and assist Hong Kong insolvency proceedings.

The Draft goes further by creating a dedicated chapter on judicial cooperation in cross-border bankruptcy and providing a more developed framework for cross-border insolvency matters. The key changes include the following:

- **Exposure of overseas debtors to PRC bankruptcy proceedings.** Where the debtor is located outside the PRC but PRC jurisdiction would better protect creditors' interests, either the creditor or the debtor may apply to the court with the closest connection to the debtor to commence bankruptcy proceedings. This may include, for example, the court where the debtor's principal assets in China are located. For foreign creditors, this would mean that even if the debtor is neither incorporated nor primarily operating in the PRC, it may still become subject to PRC bankruptcy proceedings if it has a sufficiently strong connection with the PRC.
- **Recognition of foreign insolvency proceedings.** Where foreign insolvency proceedings have commenced in the place of the debtor's center of main interests, the relevant party may apply to the PRC court where the debtor's principal assets in the PRC are located for recognition. If, upon review, the court finds that the foreign proceeding does not violate PRC laws, administrative regulations or public policy, does not harm national sovereignty, security or the public interest, does not prejudice the lawful interests of domestic creditors, and satisfies the reciprocity requirement, the court should recognize the foreign proceeding and may provide assistance as appropriate.
- **Equitable distribution in parallel proceedings.** If the debtor is subject to insolvency proceedings both inside and outside the PRC, an unsecured creditor that has already received payment in the foreign proceeding may participate in distributions in the PRC proceeding only after creditors of the same rank in the PRC proceeding have received distributions at an equivalent rate.



Taken together, this chapter would significantly enhance the predictability of China's cross-border insolvency regime. Foreign creditors should therefore closely monitor whether a debtor with a China nexus may enter PRC proceedings, whether a foreign proceeding may be recognized in China, and how parallel proceedings may affect potential recoveries.

2. Introducing a substantive consolidation regime for corporate groups

Under the current framework, substantive consolidation of group companies or affiliated companies relies mainly on the *Minutes of the National Courts' Bankruptcy Trial Work* Conference issued by the Supreme People's Court and certain local court guidelines. This mechanism does not yet have a clear statutory basis. In practice, courts have already applied substantive consolidation with increasing frequency. For example, in the bankruptcy of Evergrande Children's World Group Co., Ltd., a debtor applied for substantive consolidated reorganization, and 36 affiliated companies have so far been brought into the consolidated liquidation process.

For the first time, the Draft expressly provides for substantive consolidation at the statutory level.

- **Scope of substantive consolidation**. The Draft regulates substantive consolidation for affiliated companies whose corporate personalities are highly commingled and whose separate treatment would seriously prejudice the fair recovery of creditors, as well as for affiliated companies established for fraudulent purposes.
- **Jurisdiction and effects of consolidation**. Where substantive consolidation is ordered, jurisdiction lies with the court at the domicile of the core controlling enterprise in the group. Intercompany claims and liabilities among the affiliated companies are eliminated, assets are pooled, and creditors are paid on a consolidated basis in accordance with the statutory order of priority.

By addressing a number of disputed issues that have arisen in practice, the Draft would improve transparency and predictability in the insolvency treatment of corporate groups.

3. Linking out-of-court restructuring with in-court reorganization

The Draft introduces an out-of-court restructuring mechanism and sets out rules for coordinating that mechanism with court-led reorganization proceedings. In functional terms, the mechanism resembles the pre-reorganization practice that PRC courts have widely used in recent years. At present, pre-reorganization operates mainly under the *Minutes of the National Courts' Bankruptcy Trial Work Conference, the Minutes of the National Courts' Civil and Commercial Trial Work Conference*, and local court guidance. It still lacks a clear statutory basis.

The Draft incorporates helpful experience from pre-reorganization practice. Its central approach is to recognize and preserve, to the greatest extent possible, restructuring outcomes achieved out of court, thereby reducing duplication and cost once formal reorganization proceedings begin.

- **Direct approval of a preliminary reorganization plan.** If the parties have already prepared a relatively complete preliminary reorganization plan out of court, the debtor may request the court to approve that draft directly.
- **Direct incorporation of an out-of-court restructuring agreement.** If the parties have already reached a restructuring agreement out of court, they may apply to incorporate that agreement directly into the draft reorganization plan.
- **Carry-over of prior votes on unchanged terms.** If specific terms have already been voted on and approved before the formal court process begins, and those terms remain unchanged, the Draft allows those terms to be treated as having satisfied the relevant grouped voting requirements.

This mechanism would help shorten the reorganization timetable, improve efficiency, and strengthen the link between market-based out-of-court negotiations and formal judicial proceedings.

4. Strengthening protection of creditors' rights

The Draft adjusts several important rules that directly affect creditor recoveries and participation in the insolvency process.

1. **Claims filing and confirmation**
   - **Continued accrual of interest.** The Draft removes the existing rule that interest on interest-bearing claims stops accruing when the court accepts the bankruptcy application. This change may affect the calculation of claim amounts and, in turn, creditors' overall recovery expectations.
   - **Automatic confirmation of uncontested claims.** The Draft introduces an automatic confirmation rule for uncontested claims. Under the Draft, objection to a claim must be raised through litigation. If the creditor or debtor objects to a claim but does not commence litigation within a reasonable period, the claim is treated as uncontested. As a result, parties will need to act more promptly if they wish to preserve a formal challenge.
2. **A stronger role for the creditors' meeting**
   - **Recommendation of the administrator.** The creditors' meeting may recommend a candidate for administrator. Unless that candidate falls within a statutory disqualification, the court should in principle approve the appointment.
   - **Broader decision-making authority.** The creditors' meeting has broader authority over matters such as continued operation of the debtor's business and the disposal of major assets. For example, it may decide whether the debtor should borrow funds to continue operating, and whether assets that materially affect creditors' interests should be disposed of.

These changes would give the creditors' meeting a stronger role in directing and supervising the progress of the case.

3. **A clearer right to information**
   - **Inspection right for individual creditors.** For the first time at the statutory level, the Draft expressly recognizes an individual creditor's right to information. This would reduce creditors' reliance solely on the administrator or the creditors' meeting for access to case information. Under the Draft, an individual creditor may inspect information necessary for participating in the bankruptcy process, including reports on the debtor's assets, resolutions of the creditors' meeting, resolutions of the creditors' committee, and supervisory reports issued by the administrator. If the administrator refuses access without justification, the creditor may ask the court to decide the issue.
   - **Disclosure obligations during reorganization.** The Draft also strengthens disclosure obligations during reorganization. The administrator, or the debtor in a debtor-in-possession scenario, must disclose to interested parties the information necessary for their participation in the reorganization process. Such disclosure must be timely and effective, and the information disclosed must be true, accurate and complete. If an interested party considers the disclosure insufficient, it may require the debtor or the administrator to answer questions or supplement the information.

For creditors, these changes would improve transparency and support more informed decisions in voting, negotiations and supervision.

4. **A broader avoidance regime**

   — **Expanded categories of avoidable acts.** For acts occurring within one year before the court accepts the bankruptcy application, the Draft refines and expands the categories of avoidable acts. These include waiver of claims, waiver of security for claims, gratuitous transfer of property, extension of the time for performance of matured claims, other gratuitous dispositions of property rights and interests, transactions at an obviously unreasonable price, provision of security for another party's debt or assumption of another party's debt, provision of asset-backed security for the debtor's debts that were originally unsecured, and early repayment of unmatured debts.

   — **Longer look-back periods for related-party transactions.** For certain avoidable acts, the Draft extends the avoidance period where the beneficiary is related to the debtor. A one-year period may be extended to two years, and the six-month period for preferential repayments may be extended to one year.

   — **Time limits for exercising avoidance rights.** The Draft also expressly sets time limits for exercising avoidance rights. The administrator must exercise the avoidance right within one year from the date on which it knew or should have known of the ground for avoidance. A creditor must exercise the right within one year from the date on which it knew or should have known that the administrator had failed to do so.

The Draft materially strengthens protection against pre-bankruptcy abnormal transactions, improper transfers of value and related-party dealings, which would help reduce the risk of assets being inappropriately moved out of the estate before bankruptcy.

5. Creating a mechanism for administrators to resume duties after case termination

Under the current *Enterprise Bankruptcy Law*, the administrator's duties usually end once the bankruptcy process concludes and the debtor is deregistered. In practice, if parties discover a new avoidable transaction or additional distributable property after the case has closed, uncertainty often arises over asset ownership and over who, if anyone, may continue to act for the estate.

To address this issue, the Draft introduces a mechanism allowing the administrator to resume duties after the bankruptcy process has formally ended. If parties discover a new avoidable act or newly distributable assets after termination of the case, the court may restore the administrator to office so that it can continue to manage and dispose of the relevant assets and make supplemental distributions.

This mechanism would fill an important gap in the current system and better protect creditors' interests in post-termination asset recovery and distribution.

6. Establishing a debt resolution mechanism for natural persons who are jointly liable for enterprise debts

The Draft introduces a debt resolution mechanism for jointly liable individual debtors, opening a limited path toward personal debt relief within the enterprise bankruptcy framework.

Under the Draft, where an enterprise has entered bankruptcy proceedings, a natural person shareholder who becomes insolvent because he or she bears joint and several liability for the enterprise's debts may resolve his or her debts in accordance with the enterprise bankruptcy regime.

This would not amount to the establishment of a general personal bankruptcy regime. It would, however, provide a legal basis for resolving the debts of certain natural persons in the context of enterprise insolvency. Foreign creditors should therefore pay close attention to the assets of natural persons who bear joint and several liability and to the scope of debts proposed to be discharged, so as to guard against any improper reduction or evasion of liability through this mechanism.

Conclusion

Overall, the *Draft Enterprise Bankruptcy Law Amendments* represent one of the most significant structural updates to China's insolvency regime in many years. If enacted in substantially their current form, the reforms would have meaningful implications for foreign creditors, investors and other market participants involved in the restructuring or insolvency of distressed businesses with a China nexus, including in relation to case commencement, claim filing, access to information, asset recovery and distribution arrangements.

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