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INTERNATIONAL

# **TREATMENT OF SECURED CLAIMS IN INSOLVENCY AND PRE-INSOLVENCY PROCEEDINGS - III**

**INSOL International, 29-30 Ely Place, London, EC1N 6TD**  
**Tel: +44 (0) 20 7248 3333 Fax: +44 (0) 20 7248 3384**

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# CONTRIBUTORS

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1. Australia  
**Samantha Kinsey**, INSOL Fellow  
**Alex Gorovtsov**  
King & Wood Mallesons
2. Botswana  
**Chipo Gaobatwe**, INSOL Fellow  
Gaobatwe Law
3. Brazil  
**Gilberto Deon Corrêa Jr**  
**Luis Felipe Spinelli**  
**Darwin Otto de Lima**  
Souto Correa Advogados
4. British Virgin Islands  
**Richard Evans**  
Conyers Dill & Pearman
5. Canada  
**Brian Empey**  
**Andrew Harmes**  
Goodmans LLP
6. Cayman Islands  
**Caroline Moran**  
Maples Group
7. Colombia  
**Guillermo Leon Ramirez**  
Garrigues Colombia
8. Egypt  
**Gamal A Abou Ali**  
**Ward Labib**  
Hassouna & Abou Ali
9. France  
**Richard Jadot**  
DWF (France) AARPI  
**Julie Lavaure**  
**Juliette Bour**  
Veil Jourde
10. Germany  
**Christine Borries**  
**Carl Philipp Christmann**  
Jones Day
11. Ghana  
**Clara Amarteifio-Taylor**  
**Azali Ackuaku**  
**Esther Addei**  
PWC

# CONTRIBUTORS (CONTD)

---

12. Hong Kong

**Naomi Moore**  
**Trinh Hoang**  
**Tracy Wong**  
**Rachel Shieh**  
DLA Piper

13. India

**Sanjay Bhatt**  
Kesar Dass B & Associates

14. Israel

**Dr. Ziv Preis**  
**Zuriel Lavie**  
Lipa & Co

15. Italy

**Giorgio Cherubini**  
Founding Partner EXPLEGAL

16. Kenya

**Vruti Shah**  
**Joyce Mbui**  
**Irene Fwaya**  
**Godana Galm**  
**Nadia Salim Mire**  
**Michelle Kariuki**  
Bowmans Kenya (Coulson Harney LLP)

17. Kingdom of Saudi Arabia

**Rafiq R. Jaffer**  
**Rawan Al Sawad**  
Company - Al Tamimi & Co.

18. Malaysia

**Ira Biswas**  
**Jimmy Ng Chwe Hwa**  
**Alexie Ng Ying Ching**  
Chooi & Company

19. Mexico

**Francisco J. G. Guemez**, INSOL Fellow  
Fernandez, García-Naranjo, Boker & Garibay, SC

20. Nigeria

**Wolemi Esan SAN**  
**Ganiyat Seriki**  
**Peter Abegunrin**  
Olaniwun Ajayi LP

21. Russia

**Pavel Boulatov**  
**Irina Maisak**  
**Alexander Sysoev**  
White & Case LLC

22. Singapore

**Debby Lim**, INSOL Fellow  
Dentons Rodyk & Davidson LLP

# CONTRIBUTORS (CONTD)

---

23. South Africa

**Prof. Reghard Brits**  
University of the Western Cape

24. South Korea

**Chiyong Rim**  
Kim & Chang

25. Spain

**Eduardo Fernández Goñi**  
**Juan José Berdullas Pomares**  
Garrigues

26. The Netherlands

**Merijn Moeliker**  
**Alejandra Bouts**  
**Imke Been**  
Florent

27. United Arab Emirates

**William Watson**  
**Sam Manful**  
**Alexandra Wingrove**  
Paul Hastings LLP

28. United Kingdom

**Gemma Long**  
**Rebecca Oliver**  
Norton Rose Fulbright LLP

29. United States of America

**Evan Hollander**  
**Danny Rubens**  
**Meredith Dawson**  
**Nicholas Sabatino**  
**Michael Trentin**  
**Lenni Elias**  
Orrick, Herrington & Sutcliffe LLP

# PRESIDENT'S INTRODUCTION

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An effective restructuring and insolvency system plays an important role in supporting financial stability and economic growth. When there is a clear, predictable and transparent process for secured creditors to enforce their rights in the event of a debtor's default - or otherwise to receive adequate protection if their rights are compromised - banks and other financiers are more willing to extend credit at lower commercial rates. This enhances liquidity and is an enabler of business growth and innovation. With the variety of providers of secured credit increasing and diversifying, an updated review of the way claims are dealt with is incredibly timely.

The inherent link between insolvency systems, the legal framework governing security rights and a healthy and functioning financial system and economy has been highlighted by the World Bank in its *Principles for Effective Insolvency and Creditor / Debtor Regimes*, as well as by UNCITRAL in its *Legislative Guide on Insolvency*. It is also now motivating legislators to advance significant insolvency and restructuring reform as a means to navigate the volatile and fluctuating economic conditions we are now experiencing.

In this context, the analysis of secured creditors' rights in restructuring and insolvency proceedings is both valuable and timely. INSOL International is therefore delighted to present the Third Edition of one of our most highly respected and valued titles, *The Treatment of Secured Claims in Insolvency and Pre-Insolvency Proceedings*, first published in June 2007. The second edition was published in November 2020.

The publication of the Third Edition was led by Evan C. Hollander of Orrick, Herrington & Sutcliffe LLP, New York. Evan was also involved in the publication of the First Edition of the book, and we are very grateful for his guidance, interest and ongoing commitment to ensure the publication continues to be of such exceptional quality.

This exciting Third Edition features 29 Chapters - including 09 new Chapters from Botswana, Colombia, Egypt, Ghana, Israel, Kenya, Malaysia, Saudi Arabia and South Korea.

The Chapters cover a wide range of key issues that practitioners will find useful, including the forms of security available, the means for secured creditors to enforce their rights in restructuring and insolvency scenarios, the impact of preference and voidable transactions laws on secured creditors, priority in the distribution of the insolvency estate, and what happens when a creditor is over-secured or under-secured.

The Third Edition of the book also includes a number of new questions, reflecting the evolving global economic circumstances - and the pace of insolvency reform and cross-border insolvency developments - since the last edition was released.

Of particular note, each country report now provides an analysis of security rights available over digital assets, cryptocurrency and other intangible property.

This book is a highly valuable resource for INSOL's global membership. Indeed, given the frequency with which complex restructuring and insolvency matters now involve a cross-border element, it is important to remain up-to-date on comparative security rights and enforcement mechanisms in restructuring and insolvency scenarios in various jurisdictions around the world.

INSOL expresses its sincere appreciation to the project leader and each of the country contributors for their time, expertise and commitment in preparing their Chapters, and helping to bring this landmark Third Edition to life.



Alastair Beveridge  
President, INSOL International

March 2026

# FOREWORD

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In support of its mission to educate insolvency professionals about commercial laws across the globe, INSOL International released the First Edition of this Guide in 2007. That handy, accessible and well-organised reference tool addressed the issues impacting secured creditors in 12 jurisdictions.

The Second Edition of the Guide, published in 2020, was expanded to cover the laws in 20 jurisdictions.

This new Third Edition now significantly expands on the scope of questions and issues developed for the prior editions and covers the laws in 29 jurisdictions, reflecting the breadth of INSOL's coverage and networks around the world.

The treatment of secured claims is a matter that insolvency practitioners address in virtually every case in every jurisdiction. As more corporations extend their presence across borders in a globalised, digital economy, it has become critical for lenders and their counsel to understand the nuances of the treatment of secured claims in multiple jurisdictions.

This new volume of the Guide clearly illustrates the advantages and limitations of having secured status in restructuring and liquidation proceedings in each of the jurisdictions covered.

We hope that this study will enable practitioners to navigate the complexities that arise in multinational restructurings and that it will provide investors with a handy guide for sound practical information regarding the risks and rewards of secured investments in different countries.

The project would not have been possible without the help and support of others. The initial acknowledgement must go to the INSOL Technical Research Committee for developing the concept and format of the project and to my predecessor, Andrew DeNatale, who oversaw the production of the initial edition of the Guide. I also extend my thanks to the contributors, each of whom submitted excellent materials for their respective jurisdictions. Finally, I would like to extend my sincere gratitude to my colleagues, Daniel Rubens, Meredith Dawson, Nicholas Sabatino, Michael Trentin and Lenni Elias for assisting in drafting the United States chapter and in helping to review the other chapters of the Guide.



Evan C. Hollander  
Orrick, Herrington & Sutcliffe LLP, New York

The background features a dark blue field with a large, stylized 'V' shape formed by overlapping triangles. The top half of the 'V' is composed of three downward-pointing triangles in shades of dark blue, maroon, and red. The bottom half is composed of three upward-pointing triangles in the same color palette. A solid red horizontal bar runs across the top and bottom edges of the image.

**UNITED STATES OF AMERICA**

**1. Briefly summarise the types of security interests / rights that are available**

- (a) What are the common forms of security interests / rights taken in respect of movable or personal property, including the taking of a pledge, lien, retention of title, fixed or floating charge?**
- (b) What are the common forms of security interests / rights taken in respect of intangible property, including intellectual property and digital assets? Are digital assets (including cryptocurrency) recognised as "property" capable of being subject to a security interest?**
- (c) What are the common forms of security interests / rights taken in respect of immovable or real property, including the taking of a mortgage, lien or privilege?**
- (d) Is the security interest / right granted by law, contract or both?**
- (e) What steps must be taken to ensure that the security interests / rights are enforceable against third parties?**

**1.1 Personal or movable property**

Generally speaking, in the United States, security interests in personal property are governed by state law, principally article 9 of the Uniform Commercial Code (UCC), which has been adopted, with modifications, by every state. Article 9 covers most types of consensual security interests in personal property, including fixtures (personal property attached to real property).

Under article 9 of the UCC, a security interest arises when a debtor grants to a creditor (the secured party) a security interest in specified property owned by the debtor to secure the debtor's obligations to the creditor.

The grant of a security interest to the secured party entitles the secured party, upon default by the debtor on any such obligations, to seize the collateral covered by the security interest to satisfy the secured obligation. The security interest "attaches" to the collateral by the execution of a security agreement by the debtor and the giving of value by the secured party. The secured party must then take steps to "perfect" its security interest in a manner prescribed by article 9. A security interest in collateral that has "attached" pursuant to a security agreement but is not "perfected" is subject to the attachment of competing security interests by other creditors, is subordinate to future perfected security interests of other creditors in the collateral and may be cut off by persons purchasing the collateral. Furthermore, without perfection, a secured party's interest in the collateral will not be respected as a secured claim in a bankruptcy case.

The most common method of perfection prescribed by article 9 of the UCC is the filing of a financing statement, known as a "UCC-1", pursuant to which the secured party gives public notice of its interest in the collateral to the debtor's other existing creditors, future creditors and prospective purchasers.

Under certain circumstances, article 9 also permits a secured party to perfect its security interest in collateral by possession or "control" of the collateral. Notably, a security interest in deposit accounts may *only* be perfected by the secured party obtaining control over such deposit accounts. For certain other types of collateral, such as investment property (e.g. debt or equity securities and securities accounts), letter of credit rights and instruments, a secured party with control over the collateral will have priority over the security interest of another creditor that is perfected by means of a filed UCC-1. It is important to note that "control" for purpose of article 9 is not the same as possession. Article 9 includes specific requirements for obtaining control of collateral, which vary depending on the type of collateral and a new article 12 (which, as of publication, has been adopted in 32 of the 50 US states and the District of Columbia) governs control of certain digital assets, such as cryptocurrency.

Article 9 does not govern all types of movable and personal property. For example, motor vehicles are issued certificates of title on a state-by-state basis, and in most cases the state

certificate of title statutes will govern perfection of a security interest in that property (generally requiring that the interest be notated on the physical certificate of title). The perfection of security interests in aircraft, railroad rolling stock and certain vessels is governed by federal law rather than state law, although the UCC governs most other aspects of a security interest in such property.

Finally, it is best practice to perfect security interests in intellectual property in accordance with both article 9 and federal intellectual property statutes. While article 9 provides for perfection of a security interest in patents or trademarks by the filing of a UCC-1 financing statement, a security interest can also be registered with the United States Patent and Trademark Office by recording a copy of the applicable security agreement. The Copyright Act, U.S. Code, Title 17, specifically pre-empts the UCC and accordingly a security interest in registered copyrights must be recorded with the United States Copyright Office in order to be perfected.

### 1.2 Real or immovable property

A security interest in real property is usually granted through a mortgage. A mortgage involves the transfer of an interest in land as security for a loan or other obligation. Mortgages are mainly governed by state statutory and common law, although they may also be subject to certain federal laws and / or state or federal agency regulation depending on whose law the mortgagee (the provider of the loan or other interest given in exchange for the security interest) was chartered or established under.

### 1.3 Statutory liens

Liens on personal and real property may also attach statutorily, or by operation of law. Such liens are usually neither contractual nor consensual. Examples include federal tax liens, mechanics' liens, carriers' liens and judgment liens. Such liens arise under and are governed by the particular statute that creates them, but their priority with respect to other liens is generally dealt with under article 9 of the UCC (in the case of personal property), other state law (in the case of real estate) or federal law (in the case of liens created under federal law, such as federal tax liens).

## 2. How are security interests / rights enforced? Is a court process or out-of-court procedure required, or are both methods available? What are the practical difficulties experienced when security is enforced?

### (a) If pre-insolvency (restructuring) proceedings are available in addition to insolvency (liquidation) proceedings, how is the enforcement of security interests / rights treated differently in each type of proceeding?

The procedure for enforcing security interests varies depending on whether the collateral in question is personal property or real estate. In the case of personal property, upon a default, a secured party would typically accelerate the debt and enforce its security interest by sending a default notice to the debtor stating its intention to enforce its security interest. With the consent of the debtor and of any creditors with a subordinate lien on the collateral, a secured party may enforce its security interest by taking title to the collateral in satisfaction of all or an agreed portion of the outstanding debt. This is referred to as "strict foreclosure."

More commonly, the secured party will foreclose on its security interest by way of a public auction or private sale of the collateral, which in either case must be conducted in the manner prescribed by article 9 of the UCC. Perhaps the most important requirement under article 9 is that the creditor dispose of the collateral in a "commercially reasonable manner." Both strict foreclosure and article 9 sales of the collateral are out-of-court, non-judicial processes.

The secured party is entitled to limited use of "self-help" - i.e. the right to take possession of the collateral from the debtor. If the secured party breaches the peace or creates a disturbance in attempting to take the collateral, it may be liable to the debtor for damages. Often, the secured party and the debtor will negotiate for the "peaceful possession" of the collateral to be turned over to the secured party so as not to breach the peace. If the secured party is unable to repossess the collateral without breaching the peace, the secured party must proceed with judicial action.

In the case of personal property collateral, the secured party can pursue either an action in replevin or an action for claim or delivery, where the sheriff or similar public official is authorised by the court to repossess the collateral on behalf of the secured party. That judgment would need to be domesticated in all jurisdictions in the US where the collateral is located. After the relevant time under applicable state law passes, execution on and sale of the collateral can be made to satisfy the lender's claims secured by that collateral. Depending on the jurisdiction, the sheriff may either turn the collateral over to the secured party immediately or hold it in escrow until the conclusion of the disposition process.

With respect to real estate, the failure to make payments or the existence of other defaults under the mortgage permits the mortgagee to accelerate the entire mortgage debt, to declare it immediately due and payable, and to commence legal proceedings to foreclose (enforce) its mortgage. If the mortgage debt remains unpaid after the foreclosure judgment is entered, the mortgaged property may be sold, and the proceeds may be applied to the remaining mortgage debt. The foreclosure process depends on state law and the terms of the mortgage. The most common processes are court proceedings (judicial foreclosure) or grants of power to the mortgagee to sell the property (power of sale foreclosure). Many states regulate the ability of the mortgagee to accelerate the debt and override the express terms of the mortgage by creating a statutory payment grace period, which grants the mortgagor a right to redeem the property to avoid foreclosure.

**3. If pre-insolvency (restructuring) proceedings are available, describe the types of pre-insolvency (restructuring) proceedings that are available, including:**

- (a) Who can initiate the proceeding?**
- (b) What are the criteria used for opening the proceeding?**
- (c) Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc.?**
- (d) Does the debtor's management remain in control of the business during the proceeding?**
- (e) May contracts, leases and secured and unsecured debts be adjusted in the proceeding without affected creditor consent?**
- (f) Is creditor consent required to effectuate pre-insolvency (restructuring) proceedings? What is the level of consent required to effectuate a restructuring? Is it possible to "cram down" creditors, including secured creditors, that do not consent?**
- (g) Is shareholder consent required in order to effectuate pre-insolvency (restructuring) proceedings?**

The United States does not have a formal, statutory pre-insolvency proceeding analogous to those in many other jurisdictions. Typically, a company facing financial distress will first attempt to negotiate a consensual, out-of-court restructuring with its key creditors. These "workouts" may be highly effective and cost efficient in circumstances where a company need only restructure its financial indebtedness and not its operations. As workouts are creatures of contract, however, companies may face significant obstacles where not all affected creditors agree to participate, particularly in circumstances where companies seek to modify fundamental terms such as maturity dates, timing and amount of principal or interest payments or pro rata sharing provisions. These fundamental terms, which are commonly referred to as "sacred rights", cannot be modified without the consent of each affected creditor and thus may provide individual creditors (or a minority group of creditors) with the power to block a restructuring that may be desired by the majority.<sup>1</sup>

<sup>1</sup> Company's may seek to avoid a "hold out" problem through "liability management exercises" by which they exploit weaknesses in their financial documents in order to obtain additional liquidity to provide time to improve financial performance and avoid a costly Chapter 11 bankruptcy case. However, as these manoeuvres often benefit a subset of lenders at the expense of another and can offer only temporary

If a company is unable to achieve the necessary level of creditor or shareholder consent to implement a comprehensive restructuring, or if the company and the majority consenting creditors require that the restructuring terms be imposed on dissenting creditors, the company may turn to the formal court-supervised process under Chapter 11 of the Bankruptcy Code.

While Chapter 11 is not a pre-insolvency proceeding in the strict sense, it is often used proactively by companies that are not yet technically insolvent but are facing impending financial distress. As discussed further below, Chapter 11 allows for a binding restructuring plan that can be imposed on dissenting creditors even in circumstances where the consent of the dissenting creditors would otherwise be required under the operative contract.

### 3.1 Who can initiate a Chapter 11 proceeding?

Restructuring proceedings under Chapter 11 may be commenced either voluntarily by the debtor or involuntarily by creditors. A voluntary case is initiated by the filing of a bankruptcy petition by the debtor itself, which may be an individual, partnership, corporation or other eligible entity. Involuntary proceedings may be commenced by creditors meeting certain statutory thresholds. Specifically, if the debtor has 12 or more creditors, a case may be commenced by at least three creditors holding undisputed, non-contingent claims if the aggregate claims of such creditors exceed the value of the collateral securing such claims by at least USD 21,500.<sup>2</sup> If the debtor has fewer than 12 creditors, a single creditor with a qualifying claim may commence an involuntary case. A debtor that is the subject of an involuntary petition, may contest the petition. The court will grant relief on an involuntary petition if the debtor is generally not paying its debts as they become due, or if a custodian has been appointed or has taken possession of substantially all of the debtor's property within 120 days prior to the filing.

### 3.2 What are the criteria used for opening the proceeding?

The criteria for opening an insolvency proceeding are relatively broad. A debtor need not be insolvent to file for bankruptcy protection; it is sufficient that the debtor faces financial distress or is unable to meet its obligations as they mature. For involuntary cases, the statutory requirements described above must be satisfied, and the court must find that the debtor is generally not paying its debts as they come due, subject to certain exceptions.

### 3.3 Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc.?

The main actors in a restructuring proceeding include the Bankruptcy Court, which is a unit of the federal district court with broad power to oversee the case; the United States Trustee, an officer of the Department of Justice who supervises the administration of bankruptcy cases; statutory committees, who serve to represent various constituencies within the insolvency proceeding such as unsecured creditors or equity security holders, and, in some cases, a Chapter 11 trustee.

- **Bankruptcy Court**

Jurisdiction under the Bankruptcy Code is initially vested in the United States District Court. The district court is authorised to refer cases under the Bankruptcy Code and any or all proceedings arising under the Bankruptcy Code or arising in or related to a case under the Bankruptcy Code to the bankruptcy judges for the applicable district. All district courts have entered standing orders which automatically refer cases and proceedings to bankruptcy judges within their district. This reference may be withdrawn from the bankruptcy court, in whole or in part, by the district court "for cause shown."

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relief, liability management exercises may ultimately delay but not avoid a bankruptcy filing and exacerbate the intercreditor hostility and attendant cost of that proceeding.

<sup>2</sup> This amount became effective on 1 April 2025 after being adjusted for inflation. Prior to that date the amount was USD 18,600.

▪ **The United States Trustee**

The United States Trustee Program is a regulatory and enforcement body that promotes the integrity of the bankruptcy system. The United States Trustees supervise the administration of cases filed under the Bankruptcy Code, and their responsibilities include, among other things:

- (i) taking legal action to enforce the requirements of the Bankruptcy Code and to prevent fraud and abuse;
- (ii) referring matters for investigation and criminal prosecution when appropriate;
- (iii) ensuring that bankruptcy estates are administered promptly and efficiently and that professional fees are reasonable;
- (iv) appointing and convening creditors' committees in Chapter 11 business reorganisation cases;
- (v) reviewing disclosure statements and applications for the retention of professionals; and
- (vi) advocating with respect to matters under the Bankruptcy Code and rules of procedure in court.

▪ **Committees**

The Bankruptcy Code provides that an official committee of unsecured creditors shall be appointed by the United States Trustee in every Chapter 11 case, and that the United States Trustee may appoint other official committees of creditors and equity security holders if necessary to ensure adequate representation of creditors or equity security holders. These committees are allowed to retain professionals and to actively participate in all aspects of the case in which their constituents are interested. Members of official committees are obligated to act in the interests of the constituency they represent rather than their own parochial interests and the debtor's bankruptcy estate is required to pay the reasonable fees and expenses of the professionals retained by official committees.

Creditors and equity holders may also form unofficial ad hoc committees and retain professionals to negotiate terms of a restructuring plan with the debtor. Unlike official committees, members of ad hoc committees have no obligation to act in the interests of any other party in the case, and although ad hoc committees have no statutory right to the payment of their professional fees, they may be awarded compensation if the court determines that they have made a "substantial contribution" to the case.

▪ **The Chapter 11 trustee**

In cases filed under Chapter 11, the debtor's management typically continues in possession of the debtor's property as a "debtor-in-possession" and is authorised to operate the business and administer the bankruptcy estate. Generally, a reference in the Bankruptcy Code to "trustee" also refers to the debtor-in-possession if a trustee has not been appointed. In rare instances, a trustee may be appointed in a Chapter 11 case, though this is an extraordinary remedy. A Chapter 11 trustee may be appointed:

- (a) "for cause," including fraud, dishonesty, incompetence or gross mismanagement by current management, either before or after the commencement of the case;
- (b) if such appointment is in the best interests of creditors and equity security holders and other interests of the estate; or
- (c) if grounds exist to convert to a Chapter 7 liquidation or to dismiss the case under section 1112 of the Bankruptcy Code, but the court determines that the appointment of a trustee (or an examiner) is in the best interests of creditors and the estate.

A Chapter 11 trustee may be selected by the debtor's general unsecured creditors.

When a Chapter 11 trustee is appointed, existing management is displaced and the Chapter 11 trustee is vested with authority to manage the bankruptcy estate and to operate the debtor's business, unless the court orders otherwise.

**3.4 Does the debtor's management remain in control of the business during the proceeding?**

As discussed above, in Chapter 11 proceedings, the debtor's management generally remains in place and continues to operate the business as a debtor-in-possession, subject to the oversight of the court and the United States Trustee. However, significant actions outside the ordinary course of business require court approval, and a trustee may be appointed if circumstances warrant. As mentioned, if a Chapter 11 trustee is appointed during the case, management loses its authority to control the business.

**3.5 May contracts, leases and secured and unsecured debts be adjusted in the proceeding without affected creditor consent?**

In a Chapter 11 case, the debtor may propose a plan of reorganisation that modifies the rights of secured and unsecured creditors and may assume or reject executory contracts and unexpired leases, subject to court approval and statutory requirements.

An executory contract is generally a contract where material obligations remain to be performed by both the debtor and the non-debtor party. Before an executory contract may be assumed, the debtor must cure all existing monetary defaults. If the debtor rejects the executory contract, the non-debtor party is left with a prepetition general unsecured claim for damages.

The modification of rights of creditors may be implemented without the consent of every affected creditor within a class, provided the plan meets the requirements for confirmation, including the Chapter 11 Voting Threshold (defined below). In fact, as explained below, in certain circumstances a plan can be implemented without the consent of any creditors in a given class.

**3.6 Is creditor consent required to effectuate pre-insolvency (restructuring) proceedings? What is the level of consent required to effectuate a restructuring? Is it possible to "cram down" creditors, including secured creditors, that do not consent?**

In a Chapter 11 case, the debtor seeks creditor consent to a plan of reorganisation or, in some cases, a plan of liquidation. For purposes of voting on a plan, creditors are separated into classes consisting of claims that are "substantially similar" to each other.

Under Chapter 11, a class of creditors is deemed to have voted in favour of a plan so long as two-thirds in amount and a majority in number of the creditors voting in such class vote in favour of the plan (the Chapter 11 Voting Threshold) regardless of whether a higher threshold would be required under the applicable contract. In fact, a class of creditors can be compelled to accept treatment under a Chapter 11 plan even where no creditors in the class have voted in favour of the plan provided certain statutory requirements are met, including that the plan is fair and equitable and has been accepted by at least one impaired class of creditors (excluding the votes of any insiders in such impaired class).

With respect to a class of secured creditors, a plan will be deemed to be "fair and equitable" if, inter alia, the class of secured creditors retain their liens in the collateral and are provided a secured claim equal to: (a) where the collateral has a value less than the amount of the secured creditors' pre-petition claim, the value of the collateral at the time the plan is approved; or (b) where the collateral has a value greater than the amount of the secured creditors' pre-petition claim, the full amount of the pre-petition claim, plus the amount of any post-petition interest, fees and expenses provided for in the applicable agreement with the debtor (not to exceed the value of the collateral at the time the plan is approved).

Where a secured creditor's claim exceeds the value of the collateral securing the claim, the creditor is referred to as being "under-secured" and the balance of the claim in excess of the value of the collateral (commonly referred to as the "deficiency claim") will ordinarily be treated as a general unsecured claim.<sup>3</sup>

Where the value of the collateral securing a secured creditor's claim exceeds the amount of the claim, the creditor is referred to as being "over-secured." To minimise the time and expense of a bankruptcy case, companies frequently negotiate the terms of a restructuring plan with key stakeholders prior to filing for Chapter 11. Where the debtor is able to negotiate a pre-filing agreement satisfying the Chapter 11 Voting Threshold with respect to each impaired class under the proposed plan, the plan will be commonly referred to as a "pre-packaged" plan.

Where the debtor is able to negotiate a pre-filing agreement satisfying the Chapter 11 Voting Threshold with one or more but not all classes that will be affected by the plan (or with a substantial portion of one or more classes to be affected under the plan) the plan will be commonly referred to as a "pre-arranged" plan.

The ability to negotiate a pre-packaged or pre-arranged plan will result in a more efficient and predictable restructuring. However, it is important to emphasise that the binding, non-consensual adjustment of creditor rights - including the ability to cram down secured or unsecured creditors - can only be accomplished through the formal Chapter 11 process, not through any out-of-court process.

**3.7 Is shareholder consent required to effectuate pre-insolvency (restructuring) proceedings?**

Shareholder consent is not required to consummate a restructuring under the Bankruptcy Code. In the case of a solvent debtor, shareholders may be entitled to vote on the plan, but their rejection would not necessarily prevent its confirmation.

**4. Are insolvency (liquidation) proceedings available? If so, describe the types of insolvency (liquidation) proceedings that are available, including:**

- (a) Who can initiate the proceeding?**
- (b) What are the criteria used for opening the proceeding?**
- (c) Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc?**
- (d) Does the debtor's management remain in control of the business during the proceeding?**
- (e) May contracts, leases and secured and unsecured debts be adjusted in the proceeding without affected creditor consent?**
- (f) Is creditor consent required to effectuate insolvency (liquidation) proceedings?**
- (g) Is shareholder consent required to effectuate insolvency (liquidation) proceedings?**

The United States Bankruptcy Code provides two primary types of insolvency proceedings for corporate debtors: Chapter 11 (discussed above), which is the primary mechanism for restructuring a troubled company, and Chapter 7, which is a formal process providing for the liquidation of the debtor's assets under the supervision of an impartial trustee.<sup>4</sup>

<sup>3</sup> In certain circumstances the secured creditor may elect to have its undersecured claim treated as fully secured, in which case the creditor will receive a new secured note in the notional amount equal to its total claim but with a below market interest rate resulting in claim with a present value only equal to the value of the collateral securing the claim. If such election has been made, the holder of the undersecured claim will waive any distribution in respect of its unsecured deficiency claim.

<sup>4</sup> Chapter 11 may also be used to liquidate a debtor's assets under the control of the debtor's existing management.

**4.1 Who can initiate the Chapter 7 liquidation proceeding?**

Chapter 7 liquidation proceedings, like restructuring proceedings under Chapter 11, may be commenced either voluntarily by the debtor or involuntarily by creditors.

The same rules that apply to involuntary proceedings under Chapter 11 apply in Chapter 7 cases. That is, if the debtor has twelve or more creditors, a case may be commenced by at least three creditors holding undisputed, non-contingent claims if the aggregate claims of such creditors exceed the value of the collateral securing such claims by at least USD 21,500. If the debtor has fewer than twelve creditors, a single creditor with a qualifying claim may file.

**4.2 What are the criteria for opening the proceeding?**

As with Chapter 11 cases, a debtor need not be insolvent to file a Chapter 7 liquidation case. The debtor must merely be facing financial distress or be unable to meet its obligations as they mature. For involuntary cases, the statutory requirements described above must be satisfied and if the debtor contests the creditor petition, the court must find that the debtor is generally not paying its debts as they become due, subject to certain exceptions.

**4.3 Who are the main actors: court, administrator, liquidator, trustee, receiver, controller, representative of creditors, state representatives etc?**

The main actors in a Chapter 7 liquidation proceeding are largely the same as in a Chapter 11 restructuring proceeding, with the exception that statutory committees are not appointed in Chapter 7 cases and an independent Chapter 7 trustee is appointed to manage the liquidation of the debtor in every Chapter 7 case.

- **Bankruptcy Court**

As in a Chapter 11 case, the Bankruptcy Court oversees and administers all Chapter 7 liquidation cases.

- **The United States Trustee**

The United States Trustee is responsible for the appointment of an interim Chapter 7 trustee in each Chapter 7 case. As with Chapter 11 cases, the office of the United States Trustee will supervise the Chapter 7 case in order to promote the integrity of the bankruptcy system and to combat fraud and abuse.

- **The Chapter 7 Trustee**

In Chapter 7 liquidations, an interim Chapter 7 trustee will be appointed by the regional office of the United States Trustee (subject to the right of unsecured creditors to replace that candidate with their own selection at the initial meeting of creditors convened by the office of the United States Trustee)<sup>5</sup>. The Chapter 7 trustee will administer the debtor’s bankruptcy estate and distribute the proceeds of the estate to the debtor’s creditors. Unlike a Chapter 11 trustee, however, the Chapter 7 trustee is not statutorily authorised to operate the debtor’s business but may be granted authority to do so by the bankruptcy court if it is deemed to be in the best interests of the debtor’s estate.

**4.4 Does the debtor’s management remain in control of the business during the proceeding?**

No. In a Chapter 7 case, management is immediately displaced by the Chapter 7 trustee, who will assume exclusive authority over the debtor’s assets and operations for the purpose of liquidation.

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<sup>5</sup> If the unsecured creditors do not elect to replace the interim trustee at the initial meeting of creditors, the interim trustee will become the permanent Chapter 7 trustee in the case.

**4.5 May contracts, leases and secured and unsecured debts be adjusted in the proceeding without affected creditor consent?**

Unlike Chapter 11 where secured or unsecured claims may be adjusted through a plan of reorganisation, because the goal of a Chapter 7 proceeding is the liquidation of the debtor's assets, the trustee simply liquidates collateral to pay creditors according to their statutory priorities. Further, while a Chapter 7 trustee may also assume or reject executory contracts and leases, the primary focus is on the liquidation of assets and distribution of proceeds.

**4.6 Is creditor consent required to effectuate insolvency (liquidation) proceedings?**

No. In a Chapter 7 liquidation, no creditor consent is required for the trustee to liquidate assets and distribute the proceeds according to the priority scheme set forth in the Bankruptcy Code.

**4.7 Is shareholder consent required to effectuate insolvency (liquidation) proceedings?**

Shareholder consent is not required to commence a liquidation proceeding under Chapter 7.

**5. Could the granting of a security right or interest to a creditor be voided or be deemed a preferential treatment prejudicing the rights of the debtor or third parties? What are the grounds upon which the security right or interest can be challenged?**

Yes, the granting of a security interest to a creditor can be challenged and voided in both a Chapter 7 and a Chapter 11 case. The trustee or debtor-in-possession is granted broad powers under the Bankruptcy Code to avoid certain transfers made before the bankruptcy filing to ensure equitable treatment among all creditors and to maximise the assets available for distribution.

The two primary grounds for challenging the granting of a security interest are that it was a preferential transfer or a fraudulent transfer.

**5.1 Preferential transfers**

The purpose of preference law is to prevent a debtor from favouring certain creditors on the eve of bankruptcy and to discourage aggressive collection actions as a debtor's financial condition deteriorates. Under section 547 of the Bankruptcy Code, the trustee may avoid a transfer (which includes the granting of a security interest) if it meets five criteria:

- (i) the transfer was to or for the benefit of a creditor;
- (ii) the transfer was on account of an antecedent debt (a debt that existed before the transfer was made);
- (iii) the debtor was insolvent at the time of the transfer (insolvency is presumed during the 90 days before the bankruptcy filing);
- (iv) the transfer was made within 90 days before the bankruptcy filing, or within 1 year if the creditor was an "insider" (such as a director, officer or relative of the debtor); and
- (v) the transfer enabled the creditor to receive more than it would have received in a Chapter 7 liquidation of the debtor.

A key issue for secured creditors is the timing of the "transfer." If a security interest is perfected within 30 days of being granted, the transfer is deemed to have occurred at the time it was granted. However, if perfection occurs more than 30 days after the grant, the transfer is deemed to have occurred on the date of perfection. If that date is within the 90-day preference period, and the underlying debt was incurred before perfection, the transfer is for an "antecedent debt" and may be avoidable as a preference.

## 5.2 Fraudulent transfers

The trustee can also avoid transfers that are deemed fraudulent under section 548 of the Bankruptcy Code or applicable state fraudulent transfer laws. This power allows the trustee to unwind transactions made within 2 years of the bankruptcy filing that unfairly depleted the debtor's assets to the detriment of its creditors.<sup>6</sup>

There are two types of fraudulent transfers: actual fraudulent transfers and constructive fraudulent transfers.

Actual fraudulent transfers occur when a debtor transfers assets with the actual intent to hinder, delay, or defraud its creditors. Proving a debtor's subjective intent can be difficult, so courts often look to "badges of fraud," such as a transfer to a related party for no consideration. However, unlike constructive fraudulent transfers, discussed below, the trustee or debtor in possession is not required to establish insolvency or insufficient consideration to establish an actual fraud claim.

A constructive fraudulent transfer does not require any proof of malicious intent. A transfer is constructively fraudulent if two conditions are met: (i) the debtor received less than "reasonably equivalent value" in exchange for the transfer or obligation incurred; and (ii) the debtor was insolvent or rendered insolvent as a result of the transfer or obligation incurred, engaged in a business with unreasonably small capital, or intending to incur debts beyond its ability to pay.

Financing transactions involving "upstream" guarantees (where a subsidiary guarantees the debt of its parent) or "cross-stream" guarantees (where a subsidiary guarantees the debt of a sister company) are common targets for constructive fraudulent transfer challenges, as the guarantor subsidiary often does not receive a direct, tangible benefit in exchange for taking on the guaranty liability. Leveraged buyouts (LBOs) can also be scrutinised under these rules. If a security interest is successfully challenged as a fraudulent transfer, the lien is voided and the lender's claim may be treated as unsecured.

## 6. What are the relative priorities in distributions among creditors and shareholders of the debtor during a pre-insolvency (restructuring) or insolvency (liquidation) proceeding?

In a US bankruptcy proceeding, distributions are made according to a strict priority scheme established by the Bankruptcy Code. The Bankruptcy Code generally respects the priorities afforded to secured lenders described in article 9 of the Uniform Commercial Code. The priority scheme provides a foundational framework for both out-of-court workouts and formal bankruptcy cases.

The general order of distribution is as follows.

Secured creditors have the highest priority with respect to their specific collateral. They are entitled to be paid from the proceeds of their collateral up to the value of the collateral. Pursuant to section 506 of the Bankruptcy Code, if the value of the collateral is less than the amount of the debt (i.e., the creditor is "under-secured"), the deficiency portion of the claim is, subject to certain exceptions described in footnote 2, treated as a general unsecured claim.

After secured claims are satisfied from their collateral, the remaining assets of the estate are used to pay specific categories of unsecured claims that are granted priority status by law. Section 507 of the Bankruptcy Code sets out these categories, which must be paid in full in a specific order before any payments can be made to lower-ranking creditors. Examples of such priority claims include claims for the debtor's domestic support obligations (in the case of individuals), expenses of administration of the bankruptcy case (including professional fees), and certain enumerated taxes and amounts due under certain of the debtor's employment obligations.

Creditors holding general unsecured claims are paid on a pro rata basis only after all secured and priority claims have been paid in full. This category includes trade creditors, unsecured

<sup>6</sup> Subject to certain conditions, the bankruptcy code also provides the trustee or debtor in possession to avoid transfers under applicable state laws, which generally have "look-back" periods longer than two-years.

bondholders and the deficiency claims of under-secured creditors.

Shareholders are at the bottom of the priority ladder. They receive a distribution only in cases where the debtor is solvent, and all higher-ranking creditors have been paid in full.<sup>7</sup>

The court may not alter the scheme of priorities or create sub-priorities, although pre-petition contractual provisions regarding subordination will be respected.

**7. How can secured creditors protect their interests in collateral during a pre-insolvency or insolvency proceeding?**

During an insolvency proceeding, a secured creditor must take specific actions to protect both its claim and its interest in its collateral. The automatic stay prevents any immediate enforcement actions, so the creditor must work within the framework of the Bankruptcy Code.

There are three primary methods a secured creditor can use to protect its interests in collateral during a bankruptcy proceeding.

First, to ensure its right to payment and distribution, a creditor must typically file a formal document known as a “proof of claim” with the bankruptcy court. This document states the amount and nature of the debt owed. The court sets a deadline for filing these claims, known as the “bar date,” which is strictly enforced. Failure to file a proof of claim before the bar date can result in the creditor losing all rights to recovery on its claim.

In a Chapter 11 case, a creditor is not required to file a proof of claim if its claim is listed correctly on the debtor’s schedules of liabilities and is not shown as “disputed, contingent or unliquidated.” However, the universal best practice for all creditors is to file a proof of claim to avoid any potential errors or omissions by the debtor. While the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules) require every creditor, including secured creditors, to file a proof of claim, the Bankruptcy Rules also provide that failure to file a proof of claim by a secured creditor does not void such creditor’s lien.

Second, while a proof of claim establishes the debt owed to the creditor, protecting the value of its collateral requires proactive steps. It is the creditor’s obligation to monitor its collateral during the case. If the creditor believes the value of its collateral is declining or is at risk because the debtor is using it, the creditor should file a motion with the court seeking “adequate protection.” As discussed further below in section 10, this can take the form of periodic cash payments or replacement liens to compensate the creditor for the diminution in value of its collateral during the case.

Finally, if the debtor cannot provide adequate protection, or if the debtor has no equity in the collateral and it is not needed for reorganisation, the secured creditor can file a motion asking the court for relief from the automatic stay. If the court grants this motion, the creditor is permitted to proceed with its state law remedies, such as foreclosing on the collateral, outside of the bankruptcy case.

**8. Can the rights of a creditor against a non-debtor guarantor (i.e. a guarantor that is not itself subject to a pre-insolvency or insolvency proceeding) be affected in a proceeding of the primary obligor?**

Generally, no, the rights of a creditor against a non-debtor guarantor are not affected by the primary obligor’s bankruptcy proceeding.

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<sup>7</sup> While technically subordinate to secured claims in both Chapter 11 and Chapter 7 cases, the costs of administering the bankruptcy case (administrative claims) must be paid in full, in cash, as a condition to the Bankruptcy Court confirming that Chapter 11 plan. In a Chapter 7 case, administrative claims will be paid after the repayment of secured claims, but prior to any other obligation, including any unpaid administrative expenses of Chapter 11 in instances where the case has been converted from to a Chapter 7 liquidation from a Chapter 11 case.

The US Bankruptcy Code is clear that the discharge of a debtor's debt does not impact the liability of any other entity, such as a guarantor, for that same debt. This principle, found in section 524(e) of the Bankruptcy Code, means that a creditor is ordinarily free to pursue recovery on its claim from a non-debtor guarantor or co-obligor, during or after the primary obligor's bankruptcy. The guarantor's obligation is based on a separate agreement, which is not discharged by the borrower's bankruptcy.

Should a guarantor satisfy the primary obligor's debt in full, the guarantor may then "subrogate" to the rights of the original creditor.

In rare and specific circumstances, a bankruptcy court may temporarily stay or enjoin a creditor's collection efforts against a non-debtor guarantor. This is an extraordinary remedy, not an automatic one. Courts may grant this protection in two ways: (i) extending the automatic stay; and (ii) using equitable powers to grant an injunction.

Some courts have extended the automatic stay to non-debtor guarantors, particularly if a judgment against the guarantor would be a de facto judgment against the debtor or if the stay is essential for the debtor's reorganisation.

More commonly, courts may use their broad equitable powers under section 105 of the Bankruptcy Code to issue a temporary injunction. This is typically done only when allowing a lawsuit against the guarantor to proceed would cause an adverse economic effect on the bankruptcy estate or pressure the debtor through a third party, thereby harming the reorganisation effort.

**9. What happens to secured creditors who have not complied with all the required processes for protecting their secured rights?**

If a secured creditor fails to properly perfect its security interest under applicable state law, its lien may be avoided in a bankruptcy proceeding, and its claim will be treated as a general unsecured claim. The Bankruptcy Code grants the trustee or debtor-in-possession several powers to achieve this.

The most powerful of these is the "strong-arm" power under section 544(a) of the Bankruptcy Code. More specifically, section 544(a) of the Bankruptcy Code specifies that the trustee has the same power to avoid transfers that may be exercised under applicable state law by:

- (a) a creditor that, as of the commencement of the case, had obtained a judicial lien;
- (b) a creditor that, as of the commencement of the case, had an execution returned unsatisfied;  
or
- (c) a bona fide purchaser of real property who had perfected its interest as of the commencement date.

Because the laws of most states allow these persons to prevail over unperfected or unrecorded interests, the trustee may be able to invalidate unperfected or unrecorded transfers or liens. When state law provides that such a person must file a notice of its interest in order to obtain special status, the trustee is deemed to have completed the filing.

A failure to perfect a security interest in a timely manner can also expose the lien to being avoided as a preferential transfer under section 547 of the Bankruptcy Code. If a security interest is not perfected within 30 days of being granted, the "transfer" is deemed to have occurred on the date it was actually perfected, not the date it was granted. This delay means the perfection of the lien is considered to be a security for an "antecedent debt," making it a potential preference.

Furthermore, any security interest that remains unperfected as of the bankruptcy filing is deemed to have been made immediately before the filing, making it vulnerable to avoidance as a preferential transfer.

**10. During a pre-insolvency or insolvency proceeding, is the secured party permitted to foreclose or take other enforcement actions against the collateral? Does this stay apply to all claims against the debtor?**

While a secured party is generally free to exercise its remedies and foreclose on collateral prior to a bankruptcy filing, the moment a bankruptcy petition is filed, an “automatic stay” is triggered, which immediately prohibits all such actions. The stay is one of the most fundamental and powerful debtor protections in US bankruptcy law, and it is immediately effective, regardless of whether a creditor knows of the bankruptcy filing. While the stay is applicable in both Chapter 11 reorganisations and Chapter 7 liquidations, as a practical matter in a Chapter 7 liquidation case the stay on enforcement will only be a temporary impediment as the retention of the property is not likely to be necessary to the liquidation, nor will the Chapter 7 trustee likely be interested in disposing of the collateral for the benefit of the secured creditor.

The primary purpose of the stay is to provide the debtor with “breathing room” from financial and collection pressures and to protect the bankruptcy estate from being dismembered by a chaotic race of creditors to seize assets. It preserves the status quo, allowing for an orderly reorganisation or liquidation process where similarly situated creditors are treated equally.

The scope of the stay is exceptionally broad. It halts nearly all collection and enforcement activities, including, among other things:

- (i) commencing or continuing judicial or administrative proceedings against the debtor;
- (ii) enforcing a prepetition judgment against the debtor or its property;
- (iii) any act to obtain possession of, or exercise control over, property of the estate; and
- (iv) any act to create, perfect, or enforce a lien against property of the estate.

The stay generally applies only to the debtor and its property; it does not typically protect non-debtor co-defendants, affiliates or guarantors. However, in rare circumstances, a bankruptcy court may use its broad equitable powers to extend the stay’s protections to non-debtors if such action is necessary for the debtor’s reorganisation.

**10.1 Can the stay be challenged? If so, how?**

The stay is not absolute and can be challenged by a secured creditor or other party in interest by filing a motion with the bankruptcy court seeking relief from the stay. The Bankruptcy Code provides two primary grounds for lifting the stay with respect to a secured creditor’s collateral: (i) for “cause,” including a lack of “adequate protection” of the creditor’s interest in its collateral; and (ii) if the debtor does not have equity in the property and the property is not necessary for an effective reorganisation.

Adequate protection is a critical concept that entitles a secured creditor to be protected from any decrease in the value of its collateral that may occur during the bankruptcy case. While not explicitly defined, the Bankruptcy Code suggests it can be provided through periodic cash payments to the creditor, granting the creditor an additional or replacement lien on other property, or providing the “indubitable equivalent” of the creditor’s interest.

An additional or replacement lien is particularly appropriate in situations where, in order to continue the business, the trustee proposes to use or dispose of property subject to a creditor’s floating lien, such as inventory or accounts receivables. In such a case, an alternative lien in inventory or accounts receivable equal to the value of the original lien may provide adequate protection.

Except for cash collateral discussed in section 11 below, the burden of requesting adequate protection is upon the creditor, who must prove that the continuation of the stay results in a diminution of the creditor’s interest in the property. A creditor will generally petition the bankruptcy

court for adequate protection or, in the alternative, relief from the stay.

If a debtor is unable or unwilling to provide adequate protection for a secured creditor's collateral, the court will typically grant the creditor's motion for relief from the stay to permit it to foreclose. As a practical matter, parties often negotiate a stipulation providing for adequate protection rather than leaving the matter to the discretion of the bankruptcy court.

**11. Can collateral in which a secured party has an interest be used by the debtor or sold during a case without the consent of the secured party? If collateral may be sold without the secured party's consent, may it be sold "free and clear" of the liens of the secured party? Are there specific rules regarding the debtor's use of "cash collateral" as opposed to other types of collateral?**

A trustee or debtor in possession may generally use property subject to a security interest or lien without the secured creditor's consent. It is the obligation of the secured creditor to monitor its collateral and seek adequate protection if it believes the collateral's value is declining below the amount of its claim. In a bankruptcy proceeding, section 363(e) of the Bankruptcy Code allows a creditor to ask the court to prohibit or condition the debtor's or trustee's use, sale or lease of collateral on the provision of adequate protection. If the debtor is unable or unwilling to provide adequate protection, the court may lift the automatic stay, allowing the secured creditor to foreclose on its collateral.

The Bankruptcy Code permits a debtor or trustee to sell collateral free and clear of an interest (including a security interest or lien) if at least one of these conditions is met:

- (1) applicable non-bankruptcy law would permit a sale of such property free of the interest;
- (2) the interested entity consents;
- (3) the interest is a lien and the sale price is greater than the aggregate value of all liens on such property;
- (4) the interest is in bona fide dispute; or
- (5) the entity could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest.

As this language is in the disjunctive, only one of these conditions needs to be satisfied for the sale to occur. Accordingly, the secured party's consent is not always required for the debtor to sell collateral free and clear of the lien of a secured creditor.

That said, there are other limits on a bankruptcy court's ability to authorize a sale of collateral free and clear of a secured party's liens. For example, the court may not authorize a sale free and clear where the property is not property of the estate. If the estate's ownership of the property is disputed, the ownership dispute must be resolved before the sale can proceed. Additionally, a debtor is prohibited from pursuing a sale that would accomplish what should be accomplished under a plan (i.e. effectuating what is called a "sub rosa plan") by selling encumbered assets free and clear of the liens to a new entity and distributing the new entity's securities to the former lienholders.<sup>8</sup>

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<sup>8</sup> However, in *In re Gen. Motors Corp.*, 407 B.R. 463 (Bankr. S.D.N.Y. 2009), the court approved the sale of substantially all of the debtors' assets to a new entity that was owned by General Motors creditors, including holders of secured prepetition and post-petition claims. These secured creditors received common stock in "New" General Motors in exchange for the assignment to the purchaser of their rights to credit bid their secured claims. The court approved the sale notwithstanding a *sub rosa* plan objection and noted that "it is now well established that a Chapter 11 debtor may sell all or substantially all its assets pursuant to section 363(b) prior to confirmation of a Chapter 11 plan, when the court finds a good business reason for doing so." *Idem* at 491.

Cash collateral is the exception to the rule that a debtor may continue to use a secured creditor's collateral during the course of a bankruptcy proceeding without the consent of the secured creditor. The Bankruptcy Code defines cash collateral as cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents whenever acquired. It also includes all proceeds, products, offspring, rents or profits of property subject to a security interest existing before or after the petition date.

Cash collateral may only be used with: (a) consent from all parties with an interest in the cash collateral; or (b) court authorisation after notice and hearing appropriate to the circumstances. Secured creditors often agree to allow debtors to use their cash collateral in exchange for an adequate protection package, which typically consists of replacement liens on new assets, payment of contractual interest and reimbursement of attorneys' fees in the normal course during the bankruptcy proceedings<sup>9</sup> and enhanced financial reporting and other similar protections.

A secured creditor with a senior lien on substantially all of the debtor's assets often will provide additional financing to the debtor concurrently with its agreement to allow the debtor to use cash collateral. Providing new financing (known as debtor-in-possession or DIP financing) allows the secured creditor to solidify its position as the priority lienholder, capture any previously unencumbered collateral through new DIP liens, and obtain additional fees and interest, which may be paid in cash or in-kind. The DIP lender also can obtain considerable influence over the direction of the bankruptcy case by imposing case milestones – deadlines for the debtor to accomplish certain key objectives such as the sale of assets or the filing of a Chapter 11 plan.

In some cases, the secured creditor may be able to negotiate the "roll-up" of its pre-petition secured claim into the DIP financing, which provides the secured creditor with even greater control over the case as advances under a DIP financing constitute "administrative expenses" of the bankruptcy case. While administrative expenses are technically junior to secured claims, they are not subject to being crammed down under a Chapter 11 plan and instead, must be paid in full, in cash, as a condition to approval of any Chapter 11 plan.

A debtor is permitted to obtain post-petition financing on a secured basis if it is unable to obtain credit on an unsecured basis and such financing is necessary to preserve value and fund operations. In particular, the court, after notice and hearing, may authorise the trustee to obtain credit or incur debt:

- (a) with priority over other administrative expenses (a so-called superpriority claim);
- (b) secured by a lien on unencumbered property of the estate; or
- (c) secured by a junior lien on property of the estate that is already subject to a lien.

The court may also authorise the trustee to obtain credit or incur debt secured by a senior or equal lien on property of the estate that is already subject to a lien. However, the court may only authorise granting such a lien (a "priming lien") if (i) the trustee is unable to obtain such credit otherwise; and (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is to be granted.

**12. During the course of a pre-insolvency and insolvency proceeding, can additional liens on a secured creditor's collateral be granted to a third party in violation of the contractual arrangements between the debtor and the secured creditor?**

Yes. In a Chapter 11 case, liens on a secured creditor's collateral may be granted to a third party in violation of the contractual arrangements between the debtor and the secured creditor. Under US law-governed secured loan facilities, it is typical for a borrower to agree not to encumber its property with any third-party lien other than those specifically agreed in the applicable financing documents. Notwithstanding such contractual obligations, the Bankruptcy Code authorises a

<sup>9</sup> Agreements governing the use of cash collateral frequently provide that if it is ultimately determined that the secured creditor is found to have been undersecured, interest payments made during the course of the proceeding will be recharacterised as principal payments on the creditor's secured claim.

debtor to obtain new third-party financing secured by a lien that is junior, equal or superior to existing liens on a pre-existing lender's collateral.

A bankruptcy court will only authorise a debtor to grant a lien that is superior to existing liens - known as a "priming lien" - if the debtor is unable to obtain credit any other way and if there is a sufficient "equity cushion" in the collateral such that the pre-existing lien will be "adequately protected."

An "equity cushion" refers to the excess value of a secured creditor's collateral above the amount of the creditor's secured claim, which acts as a buffer to protect the creditor's interest from potential diminution in value during the bankruptcy case. For example, if collateral is valued at USD 150 million and the secured claim is USD 100 million, the equity cushion is USD 50 million (or 50%). If a priming loan of USD 20 million is requested, then equity cushion will decrease to USD 30 million (or 30%). Courts will evaluate the sufficiency of an equity cushion on a case-by-case basis, taking into account factors like asset volatility and the debtor's proposed use of the asset during the bankruptcy case.

### **13. What distribution will a secured creditor receive in a pre-insolvency proceeding if a company is successfully reorganised?**

In a Chapter 11 reorganisation case, a secured creditor will receive a distribution pursuant to the debtor's Chapter 11 plan. The type of distribution, or consideration, that a secured creditor will receive under a plan can take various forms, including cash, new debt, and / or equity in the reorganised company.

Unless it agrees to receive a lesser amount, a secured creditor is entitled to a distribution with a present value equal to the value of the collateral securing its claim. To the extent that the secured creditor's claim exceeds the value of the collateral securing the claim, such creditor will receive an additional distribution as an unsecured creditor. This is because the Bankruptcy Code generally bifurcates the claim of a secured creditor whose claim exceeds the value of its interest in collateral into two distinct claims: a secured claim equal to the value of the secured creditor's interest in the collateral securing the claim and an unsecured claim for the balance. The amount of the claim in excess of the value of the collateral is generally called the "deficiency claim." However, the Bankruptcy Code permits a secured creditor, subject to certain conditions, to elect (the so-called section 1111(b) election) to receive deferred cash payments equal to the total amount of its claim (including the unsecured portion), although in such case the present value of such deferred cash payments will equal only the value of the collateral securing the claim and the secured creditor will be required to forgo any distribution on its deficiency claim.

As noted above, distributions to creditors occur under a Chapter 11 plan that must be confirmed by the bankruptcy court. Assuming that a Chapter 11 plan of reorganisation is otherwise in compliance with the Bankruptcy Code and applicable law, the bankruptcy court will approve the plan on a consensual basis upon acceptance by the holders of two-thirds in amount and more than one-half in number of claims in each class voting on the plan. Acceptance of the plan by the requisite majorities will bind the non-accepting members of the class.

Typically, each secured creditor is classified separately with respect to its secured claim (unless two or more secured creditors share the same collateral, in which case they are classified in the same class). However, the acceptance by each class of claims is not the only means for the confirmation of a plan. Under section 1129(b) of the Bankruptcy Code, the court may also approve the "cram down" of a particular class of creditors over their objection, if, among other things: (a) at least one impaired class of claims (excluding the claims of any insiders in the class) has accepted the plan; and (b) the plan "does not discriminate unfairly" against and is "fair and equitable" to each rejecting class. These cramdown provisions essentially permit the debtor to force a restructured obligation upon a secured creditor under the plan.

A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a rejecting impaired class is treated equally with respect to other classes of equal rank. A plan is "fair and equitable" as to a class of *secured* claims that rejects such plan if, among other things, the plan

provides that the holders of claims in the rejecting class:

- (a) (i) retain the liens securing their claims, whether the property subject to those liens is retained by the debtor or transferred to another entity, in an amount equal to the lesser of their allowed claims or the value of the collateral securing their claims; and
  - (ii) receive on account of such claims deferred cash payments equal to the present value of their secured claims;
- (b) retain liens in the proceeds of any sale of the collateral that is sold free and clear of such secured claims; or
- (c) receive the indubitable equivalent of such secured claims, such as the return to the secured creditor of the collateral or the granting of replacement liens in alternative collateral retained by the debtor.

The case law is not uniform with respect to the appropriate interest rate to apply where a Chapter 11 plan provides for a rejecting class of secured claims to receive deferred cash payments with a present value equal to the allowed amount of such claims. The Supreme Court, however, has addressed this question in the context of a Chapter 13 plan (which provides for the repayment of debts by an individual wage earner) in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).<sup>10</sup> The applicability of the Supreme Court's decision in *Till* (applying a "formula approach" which calls for the application of the national prime rate plus a premium of between 1-3% based on an assessment of the debtor's risk of non-payment) to a Chapter 11 plan of reorganisation remains somewhat unsettled.<sup>11</sup>

**14. Will the rights of a secured creditor over assets of a debtor remain intact subsequent to the reorganisation of the company?**

The secured creditor's rights often are materially altered by the Chapter 11 plan. Unless otherwise provided for in the plan or the order confirming the plan, the confirmation of a plan reverts all the property of the estate in the debtor, which property is free and clear of all claims and interests. As noted above, a plan may provide for:

- (a) the retention of liens;
- (b) the sale of the property subject to the lien; or
- (c) the indubitable equivalent of such lien.

**15. What rights does a secured creditor have if its secured claim is over-secured? What happens if a secured claim is under-secured?**

Claims under the Bankruptcy Code are initially divided into two categories: secured claims and unsecured claims. Allowed secured claims, to the extent of the value of the collateral, must be satisfied before unsecured claims.

An allowed secured claim is:

- (a) an allowed claim;
- (b) secured by a lien; and
- (c) on property in which the estate has an interest. The claim is secured to the extent of the value

<sup>10</sup> Chapter 13 is a provision of the Bankruptcy Code available only to individuals with regular income and aggregate debt levels below certain thresholds. Qualifying Chapter 13 debtors may repay all or a part of their obligations over a period of 3 to 5 years pursuant to a court approved repayment plan.

<sup>11</sup> The court in *Till* noted in dicta that that the "formula approach" may not apply in a chapter 11 case where an efficient market exists for determining the appropriate interest rate. See *Till*, 541 U.S. at 476 n.14.

of the creditor's interest in the debtor's interest in the property.

An unsecured claim is a creditor's right to payment where either no security interest (such as a lien on collateral) was obtained to safeguard against the debtor's default, or the collateral's value is insufficient to cover the full amount owed, leaving the excess unsecured.

If the collateral's value exceeds the allowed claim amount, the creditor is oversecured. In this situation, the Bankruptcy Code allows the creditor to include post-petition interest and reasonable fees and costs in its allowed secured claim, to the extent fees and costs are permitted in the underlying agreement.

Valuation is important for the determination of secured status. A claim can only be secured to the extent of the estate's interest in the collateral, and to the extent of the creditor's interest in the estate's interest. As a result, valuation of these interests directly affects the secured status of a claim. Additionally, valuation is of great importance in determining whether adequate protection is required.

**16. Will a court respect and give full force and effect to a foreign restructuring of contractual arrangements that are governed by local law? If so, what requirements will need to be met for the court to do so?**

Yes, United States courts will respect and give full force and effect to a foreign restructuring of contractual arrangements governed by United States law, provided certain requirements are met.

Generally speaking, United States courts will defer to foreign insolvency proceedings as a matter of international comity so long as those proceedings are procedurally fair and do not contravene the laws or public policy of the United States. See *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 424 (2d Cir. 2005).

United States courts favour granting comity to foreign insolvency proceedings under the principle that the equitable and orderly distribution of a debtor's property generally requires assembling all claims against such property in a single proceeding. *Id.*; *In re Schimmelpenninck*, 183 F.3d 347, 365 (5th Cir. 1999).

Such reasoning dates to at least 1883, when the United States Supreme Court considered a challenge to a Canadian scheme of arrangement in respect of US dollar denominated bonds payable in New York. *Canada Southern Ry. Co. v. Gebhard*, 109 U.S. 527 (1883). In that case, the United States Supreme Court found that the Canadian scheme comported with the spirit of United States bankruptcy laws and did not conflict with the United States Constitution. *Id.* at 539. Observing no procedural deficiencies in the Canadian proceedings, the court held that "international comity requires that schemes of this character, legalised at home, should be recognised in other countries." *Id.* at 539.

The preferred, and in some jurisdictions possibly the only, method for a foreign debtor to obtain US recognition and enforcement of its restructuring is through a proceeding under Chapter 15 of the United States Bankruptcy Code.<sup>12</sup>

Chapter 15 provides a centralised and efficient mechanism whereby the US bankruptcy court can issue an order giving the foreign restructuring full force and effect throughout the territorial jurisdiction of the United States. The court may also issue ancillary relief, including stays on

<sup>12</sup> Some courts have indicated that Chapter 15 is the exclusive means to enforce foreign restructurings. See *Halo Creative & Design Ltd. v. Comptoir Des Indes Inc.*, No. 14 C 8196, 2018 WL 4742066, at \*2 (N.D. Ill. Oct. 2, 2018) (denying a stay for failing to comply with chapter 15); *Orchard Enter. NY, Inc. v. Megabop Recs. Ltd.*, No. 09 CIV 9607 GBD, 2011 WL 832881, at \*3 (S.D.N.Y. Mar. 4, 2011) (same); see also *In re Silicon Valley Bank (Cayman Islands Branch)*, No. 24-10076 (MG), 2024 WL 734735, at \*13 n.17 (Bankr. S.D.N.Y. Feb. 22, 2024) ("While section 1509(f) permits a foreign debtor to sue in a U.S. court to collect or recover on a claim involving property of the debtor even in the absence of recognition, a broader question exists whether comity applies to allow courts to recognise foreign judgments in insolvency cases absent Chapter 15 recognition. It remains an unsettled question ...").

litigation, asset protection and enforcement of the foreign plan's terms. These orders are generally binding on all creditors with respect to their actions, assets, or claims within the US, regardless of whether the creditors are located inside or outside the United States.

As an alternative to Chapter 15, in some jurisdictions it may be possible to obtain similar relief in a non-bankruptcy court by invoking principles of international comity.<sup>13</sup> However, in this approach, the non-bankruptcy court's recognition would be limited to the specific proceeding at hand, binding only the litigants involved in that case. Other creditors or litigants could initiate separate actions or seek to enforce judgments in different US jurisdictions, forcing the debtor to repeatedly defend by persuading each subsequent court to extend comity – creating a burdensome, piecemeal process. As a result, Chapter 15 clearly is the preferred avenue for foreign companies with significant US operations, ongoing litigation or assets, as it avoids fragmented enforcement and promotes uniformity.

Procedurally, a foreign debtor seeking recognition and enforcement of a foreign restructuring must first file proceedings under Chapter 15 of the United States Bankruptcy Code.

Under Chapter 15, a foreign representative of the foreign debtor must file a petition seeking recognition of the foreign insolvency proceeding as either a “foreign main proceeding” or “foreign non-main proceeding.” 11 U.S.C. § 1517.

A “foreign main proceeding” is one “pending in the country where the debtor has the centre of its main interests,” and a “foreign non-main proceeding” is one pending in a country where the debtor “carries out a non-transitory economic activity.” 11 U.S.C. § 1502.

Subject to certain other sections of Chapter 15 and other sections of the Bankruptcy Code (e.g. section 1506’s public policy exception and section 1515’s application requirements), the bankruptcy court, upon receiving a petition for recognition, then holds a hearing and subsequently either grants or denies recognition. 11 U.S.C. § 1507; see generally *In re Ocean Rig UDW Inc.*, 570 B.R. 687 (Bankr. S.D.N.Y. 2017) (outlining requirements for debtor eligibility and recognition under Chapter 15 in greater detail; analysing factors courts consider in determining a debtor’s centre of main interests; summarising evidentiary hearing on question of recognition). Some jurisdictions, including the Second Circuit, require that the debtor have some form of property in the United States to qualify for Chapter 15 relief.<sup>14</sup>

Although a finding that a foreign proceeding constitutes a “foreign main proceeding” results in certain automatic relief for a foreign debtor (and other relief on a discretionary basis), all relief available to a foreign debtor in respect of a foreign main proceeding is available on a discretionary basis in respect of a “foreign non-main proceeding,” including the issuance of an order giving full force and effect to the foreign restructuring plan or scheme within the territorial jurisdiction of the United States.

As one court recently emphasised, obtaining recognition is only the first step in a two-step process: “Chapter 15 involves a two-step process – in step one, a decision whether to recognise the foreign proceeding as a foreign-main or non-main proceeding; in step two, *only after a foreign proceeding has been recognised*, a decision whether to recognise and enforce a foreign

<sup>13</sup> In 2024, the United States Court of Appeals for the Third Circuit updated its standards for using comity to dismiss a case in the US based on a foreign restructuring when a foreign representative has not filed a petition for Chapter 15 recognition. See *Vertiv Inc. v. Wayne Burt PTE Ltd.*, 92 F.4th 169, 178-82 (3d Cir. 2024). The Third Circuit requires the U.S. court to find the existence of a “parallel foreign proceeding,” which is when: “(1) the foreign bankruptcy proceeding is ongoing in a duly authorised tribunal while the civil action is pending before the United States court; and (2) the outcome of the United States civil action may affect the debtor’s estate.” *Id.* at 179 (citations and footnote omitted). If such a parallel proceeding is found to exist, the U.S. court “reviews the procedures and the system of laws in the foreign court and assesses whether the foreign proceedings are likely to (or likely did) result in the impartial administration of justice.” *Id.* at 176.

<sup>14</sup> See *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013) (ruling that section 109(a) of the Bankruptcy Code, which sets forth debtor eligibility requirements, applies in Chapter 15 cases); See also *infra* in section 17.

plan.” *In re Asbestos Corporation Ltd.*, No. 25-10934 (MG), 2025 WL 3023332, at \*6 (Bankr. S.D.N.Y. Oct. 29, 2025) (emphasis added).

Relief entered in step two is sometimes challenged as being “manifestly contrary to the public policy of the United States,” 11 U.S.C. § 1506, also known as the “public policy exception.” This exception has been construed very narrowly as “ensur[ing] claimants are afforded a ‘fair and impartial proceeding,’ not that they are afforded all the rights and protections they may receive in an U.S. court.” *Asbestos Corp.*, 2025 WL 3023332, at \*7.

The case of *In re Agrokor d.d.*, 591 B.R. 163 (Bankr. S.D.N.Y. 2018) is illustrative. There, the foreign representative of Croatian debtors filed Chapter 15 cases in the United States Bankruptcy Court for the Southern District of New York, seeking recognition of Croatian insolvency proceedings and enforcement of a restructuring plan (referred to as a “settlement agreement”) reached in those proceedings within the territorial jurisdiction of the United States. *Id.* at 165. The debt that was restructured in the Croatian proceedings included EUR 625 million in unsecured notes governed by New York law, as well as significant sums in liabilities governed by English law. *Id.* at 171. The *Agrokor* court first held that the Croatian proceedings qualified as foreign main proceedings under Chapter 15. *Id.* at 166. Then, in deciding whether to enforce the Croatian settlement agreement, the court considered whether the Croatian proceedings were procedurally fair and whether the agreement itself contravened the laws or public policy of the United States. *Id.* at 184.

The court analysed procedural fairness pursuant to the following “non-exclusive” eight factors:

(1) Whether creditors of the same class are treated equally in the distribution of assets; (2) whether the liquidators are considered fiduciaries and are held accountable to the court; (3) whether creditors have the rights to submit claims which, if denied, can be submitted to a bankruptcy court for adjudication; (4) whether the liquidators are required to give notice to potential claimants; (5) whether there are provisions for creditors meetings; (6) whether a foreign country’s insolvency laws favour its own citizens; (7) whether all assets are marshalled before one body for centralised distribution; and (8) whether there are provisions for an automatic stay and for the lifting of such stays to facilitate the centralisation of claims.

*Id.* at 190 (quoting *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 249 (2d Cir. 1999)).

Upon finding that seven of these factors were satisfied based on record evidence, the court concluded that the Croatian proceedings were procedurally fair. *Id.* The court also determined that no aspect of the settlement agreement contravened US law or public policy, notwithstanding the fact that the agreement contained certain third-party releases that a United States bankruptcy court may not have permitted in a plenary bankruptcy proceeding under Chapter 11 of the United States Bankruptcy Code. *Id.* at 189 (relying upon a separate case in which the court found that “even if the law in the U.S. may have provided differing results, this alone did not prevent a recognition of a [foreign] plan under broader principals of comity”); see also *In re Rede Energia, S.A.*, 515 B.R. 69, 91 (Bankr. S.D.N.Y. 2014) (noting the “well-established principle that the relief granted in a foreign proceeding and the relief available in the United States do not need to be identical”). Thus, even though the Croatian settlement agreement modified New York law-governed debt, the court recognised and enforced the agreement within the territorial jurisdiction of the United States, subject only to the final approval of the agreement in the Croatian courts where certain appeals had been lodged. *Agrokor*, 591 B.R. at 192, 197.

The *Agrokor* decision is also notable for its express rejection of the “Gibbs rule” under English law, which provides that, if a contract is made in England and meant to be performed in England, a breach of such contract should be determined by the laws in England rather than discharged in a foreign insolvency proceeding. *Id.* at 192. The *Agrokor* court noted the “clear territorial slant of the Gibbs rule” and observed that the rule is in tension with long-settled United States precedent, grounded in universalism principles, permitting foreign bankruptcy proceedings to bind United States creditors “even where[, for example,] the debtor entered into a contract governed by New York law and agreed to a New York forum selection clause.” *Id.* at 196. Referencing the English High Court’s recent reaffirmation of the Gibbs rule in *Bakshiyeva v. Sberbank of Russia, et al.* [2018]

EWHC 59 (Ch), the *Agrokor* court further held, “[t]he fact that England applies the *Gibbs* rule and refuses to recognise a discharge or modification of English law debt approved by a court outside of England is not ... a basis for this court to decline to recognise and enforce the [Croatian] Settlement Agreement within the territorial jurisdiction of the United States.” *Id.* at 192-94.

The case of *In re Vitro SAB de CV*, 701 F.3d 1031 (5th Cir. 2012) provides a contrasting example. In that case, Mexican debtors restructured notes governed by New York law in a Mexican Concurso proceeding and sought recognition and enforcement of the resulting plan of reorganisation through United States Chapter 15 proceedings. *Id.* at 1037-38. The Concurso plan provided non-consensual releases to non-debtor guarantors, which, as discussed above, were not permitted in many jurisdictions within the United States. *Id.* at 1068.<sup>15</sup>

Unlike in *Agrokor*, however, the Concurso plan also created a single class of unsecured creditors, and the necessary votes to approve the plan were achieved only by counting the votes of insiders holding intercompany debt. *Id.* at 1068-69. Although the *Vitro* court acknowledged much of the same precedent that the *Agrokor* court later relied upon, it held the facts before it were distinguishable given that the plan resulted from insider votes. *Id.* at 1068. Such a result would not be achievable under United States bankruptcy law, which as noted above in section 4, does not count insider votes for purposes of determining whether a proposed plan meets the statutory requirement that at least one class of impaired claims has voted in favour of the plan. 11 U.S.C. § 1129(a)(10).

The *Vitro* court thus rejected enforcement of the Concurso plan, refusing to “let[] one discrepancy between [United States] law and that of Mexico (approval of a reorganisation plan by insider votes over objections of creditors) make up for another (the discharge of non-debtor guarantors).” *Id.* at 1067. Significantly, however, and in keeping with other well-established United States precedent, the court did not deny enforcement on the grounds that the Concurso plan modified United States law governed debt. Rather, the denial was grounded in the fact that the plan permitted insiders to control the decision to compel creditors to release claims against the same insiders.

**17. Will a court administer plenary jurisdiction (full, complete, unqualified and absolute jurisdiction the same as if the COMI of the company was in the United States) over a foreign company in a pre-insolvency or insolvency case where the foreign company has only a limited connection to or limited amount of property located? What level of connection is required before a court will administer a plenary case of a company registered in another country?**

Yes, a Bankruptcy Court in the United States will administer plenary jurisdiction over a foreign company in a Chapter 11 case provided the company satisfies the basic eligibility requirements under the Bankruptcy Code. Chapter 11 proceedings are inherently plenary in nature, granting the court full authority over the debtor’s assets worldwide regardless of where the debtor’s COMI is located.

A company must reside or have a domicile, a place of business, or property in the United States to be eligible to file a plenary proceeding. See 11 U.S.C. § 109(a). For foreign companies, the most common qualifiers are a place of business or property. There are no materiality thresholds or minimum requirements for the size, value or nature of the business or property. Courts have construed these requirements liberally in favour of finding foreign companies eligible. For example, courts have held that debtors having only relatively few employees in the United States satisfied the place of business criteria. Courts also have consistently held that merely having cash in a bank account at a US bank or a retainer with a US law firm is sufficient to meet the eligibility thresholds.

<sup>15</sup> In June 2024, the United States Supreme Court ruled that that bankruptcy courts are not authorised to approve nonconsensual third party releases in Chapter 11 reorganisation plans. *Harrington, United States Trustee, Region 2 v. Purdue Pharma L.P.*, 603 U.S. 204 (2024). But since *Purdue*, bankruptcy courts have continued to enforce foreign plans containing third-party releases, rejecting arguments that such plans should not be enforced under the public policy exception. See, e.g., *In re Odebrecht Engenharia e Construcao S.A. - Em Recuperacao Jud.*, 669 B.R. 457, 474 (Bankr. S.D.N.Y. 2025); *In re Credito Real, S.A.B. de C.V., SOFOM, E.N.R.*, No. 25-10208 (TMH), 2025 WL 977967, at \*1 (Bankr. D. Del. Apr. 1, 2025).

These cases can be very successful where the goal is to seek a restructuring of a debtor's financial obligations. However, they tend to be less effective for implementing operational restructurings, which typically require modifying local obligations such as trade claims, supply or service contracts, and leases. Achieving these modifications generally demands support from courts in the debtor's principal place of business - a level of cooperation that is often unavailable. By contrast, US bankruptcy courts rarely need to rely on foreign courts to enforce orders against financial creditors, since these creditors frequently hold assets in the United States that can be garnished in the event of noncompliance.

Although it is relatively easy for a foreign company to meet the eligibility requirements, a court may dismiss or abstain from a case if it determines the filing was made in bad faith or if it finds that dismissal better serves the interests of creditors and the debtor. While dismissals on such grounds are uncommon, they do occasionally occur when the evidence clearly shows that the filing was abusive or where foreign interests predominate.

For example, the US Bankruptcy Court for the Southern District of Texas dismissed a case filed by a Russian oil company, finding that the filing was not aimed at financial reorganisation but rather to impede a Russian government auction of the company's key assets amid tax disputes and political pressures. *In re Yukos Oil Co.*, 321 B.R. 396 (Bankr. S.D. Tex. 2005).

Additional factors included the unlikelihood of effectuating a plan due to limited US assets, lack of Russian government cooperation and the determination that Russia was the more appropriate forum.

A court may decide to abstain from adjudicating the case if it finds that the interests of the debtor and its creditors are better served in a different jurisdiction, such as the foreign debtor's home jurisdiction. See 11 U.S.C. § 305(a)(1). For example, a Delaware bankruptcy court abstained from Bahamian debtors' Chapter 11 cases because the company's unfinished resort project was centred in the Bahamas, where the government had significant economic interests, and there were ongoing Bahamian insolvency proceedings. *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192 (Bankr. D. Del. 2015).

By contrast, the US Bankruptcy Court for the Southern District of New York refused to dismiss or abstain from a Chapter 11 case filed by a Colombian airline with only 28 employees in the United States, finding that dismissal would not better serve the debtor or its creditors since the principal creditors were located in the United States, Colombia's restructuring law was untested and lacked lease rejection provisions, and the court found no evidence of forum manipulation or unfairness to US creditors. *In re Aerovias Nacionales de Colombia S.A.*, 303 B.R. 1, 4 (Bankr. S.D.N.Y. 2003).



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DRA Dutch Restructuring Association  
EISAR Bankruptcy Commission (Saudi Arabia)  
FGV Câmara de Mediação e Arbitragem / FGV Arbitration and Mediation Chamber  
FILA Finnish Insolvency Law Association  
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**INSOL International**  
**29-30 Ely Place**  
**London**  
**EC1N 6TD**  
**Tel: +44 (0) 20 7248 3333**



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