

What Is a Chapter 15 Bankruptcy and How is It Different from a Chapter 11 Case?

Creditor's Rights Toolkit

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This article will discuss the key issues of a Chapter 15 case and the differences from a Chapter 11 case.

Chapter 15 of the Bankruptcy Code is a mechanism for debtors to have foreign insolvency proceedings recognized in the U.S. and to have the orders entered by a foreign court in those insolvency proceedings abroad given effect in the U.S.

KEY ISSUES

RECOGNITION OF A FOREIGN MAIN PROCEEDING

In a Chapter 15 case, the debtor will first commence (or become subject to) an insolvency proceeding abroad. As part of that foreign proceeding, an entity is appointed to act as a “foreign representative” of the debtors (more below). The foreign representative then files a verified petition for the debtor under Chapter 15 of the Bankruptcy Code in a U.S. bankruptcy court, typically asking the bankruptcy court to recognize the debtor’s foreign insolvency proceeding as a “foreign main proceeding.” Such recognition grants the debtor and all of its property within the territorial jurisdiction of the U.S. certain key protections under the Bankruptcy Code — most critically, the protection of the automatic stay and protection from contract and lease counterparties’ ability to terminate contracts or leases based on the filing of insolvency proceedings.

Typically, recognition of a foreign main proceeding is accompanied by the U.S. bankruptcy court’s recognition of a particular order or set of orders by the foreign court, giving effect to that order and its terms in the U.S. Sometimes, the terms of foreign insolvency orders differ from what might be approved in Chapter 11 cases. For example, many Canadian insolvency proceedings extend aspects of the Canadian equivalent of the automatic stay to the debtor’s directors and officers, while such relief is a rarity under Chapter 11.

For a debtor’s foreign insolvency proceeding to be recognized as a “foreign main proceeding,” the foreign representative must show that the foreign country in which the proceeding was filed is the debtor’s “center of main interests.” A debtor’s center of main interests is often the country where the debtor is domiciled. However, debtors that are U.S. entities and even debtors with active operations in the U.S. can still have their center of main interests abroad if, for example, key strategic decision-making or other executive functions occur in the foreign country and the U.S.-based debtor relies on foreign lenders, affiliates, or parents for funding and key support of its business operations, in addition to other considerations.

THE FOREIGN REPRESENTATIVE

While the debtor is the subject of a Chapter 15 case, the entity that actually runs the Chapter 15 proceeding in the U.S. is the foreign representative of the debtor. The foreign representative is an entity appointed by a foreign court to represent the debtor in a Chapter 15 proceeding in the U.S. It is the foreign representative that is the movant in the motions filed in a Chapter 15 case and the foreign representative that is technically seeking recognition of the debtor's foreign insolvency proceeding. The foreign representative may be one of the debtors, but it can also be another person or entity. For example, in certain Canadian insolvency proceedings, the Canadian court will appoint a monitor to work alongside and oversee the debtor throughout its restructuring process — and monitors are often appointed to act as the foreign representative in Chapter 15 proceedings.

PROVISIONAL RELIEF

Because the Bankruptcy Code requires notice of a hearing to grant recognition of a foreign proceeding under Chapter 15, Chapter 15 debtors may seek provisional relief. Provisional relief includes the imposition of the automatic stay and temporary recognition of the foreign court's insolvency order on an interim basis until the hearing on recognition of the foreign proceeding. Provisional relief is only granted as to those parties that the foreign representative specifies. Typically, a debtor's key contract counterparties, lenders, and parties in litigation with the debtor are among those against whom provisional relief is sought.

NOTICING AND CLAIMS

While debtors in Chapter 15 cases provide notice of Chapter 15 proceedings to those parties against whom they are seeking provisional relief and typically endeavor to provide notice of the recognition hearing to creditors, noticing in a Chapter 15 case is often not as robust as it is in a Chapter 11 case. This is, in part, because Chapter 15 cases are not the venue in which creditors assert claims against the foreign debtor — claims are asserted in the foreign main proceeding. For this reason, it is not uncommon for a creditor to learn that a customer, vendor, or contract counterparty has filed for Chapter 15 and is party to a foreign insolvency proceeding simply through interactions in their business relationship, not through a formal notice.

TAKEAWAY

Chapter 15 bankruptcies can be complex and are unlike typical bankruptcy filings under the Bankruptcy Code. If a customer, vendor, or contract counterparty files for Chapter 15, it is important to retain experienced bankruptcy counsel who can help navigate the best next steps to ensure your rights are preserved.

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