## THE REVIEW OF

## BANKING FINANCIAL SERVICES A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 41 No. 7 July 2025

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

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

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

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

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

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

## **AN OVERVIEW OF CHAPTER 15 PROCEEDINGS**

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