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To our clients and friends:

Welcome to our latest issue of Norton Rose Fulbright's *International Restructuring Newswire*. Our global team of lawyers are delighted to share with you key developments in cross-border restructurings.

We begin this edition by considering recognition of foreign proceedings under US Chapter 15. Our US lawyers examine recent examples of the US Bankruptcy Court refusing recognition of insolvency proceedings where the threshold eligibility requirements were not satisfied as at the petition date itself.

On a different note, our Canadian team highlight the recent successful Chapter 15 recognition applications in connection with the cross-border Cannabist restructuring. We analyze the lessons learned and ask whether this presents a common path forward for future cross-border filings in both Canada and the US.

Finally, keeping with our theme of cross-border recognition, we turn our attention to the UK and a recent decision by the High Court on the role of public policy in recognizing foreign proceedings under Great Britain's enactment of the UNCITRAL Model Law on Cross Border Insolvency. The public policy carve-out in the Model Law allows enacting states to refuse recognition where it would be contrary—or even, "manifestly contrary"—to the adopting country's public policy. Rarely do courts have the opportunity to rule on this aspect of cross-border insolvency law, which makes this decision of particular interest to restructuring professionals.

We hope you find these articles useful and we would be happy to discuss how any of these issues might impact your business.



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Petition-date compliance in US Chapter 15: Recent decisions reinforce timing-sensitive eligibility requirements

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Overview

A trio of recent decisions has brought renewed focus to the threshold eligibility requirements for recognition under Chapter 15 of the US Bankruptcy Code. *In re Siu-Fung Ceramics Holdings Limited*, the US Bankruptcy Court for the Southern District of Texas held that Section 109(a) of the US Bankruptcy Code ("Section 109(a)") applies in Chapter 15 cases and denied recognition where the foreign debtor did not have property in the US as of the petition date. The court declined to consider a retainer deposited with US counsel after the filing.[1]

That decision followed the same court's earlier ruling *In re Geden Holdings, Ltd*., which denied recognition of a Maltese liquidation proceeding based on the absence of sufficient activity to establish Center of Main Interests (COMI) as of the petition date.[2] By contrast, *In re Venus Capital Management* the US Bankruptcy Court for the District of Rhode Island held that Section 109(a) does not apply to Chapter 15 cases, but found that the debtors would have satisfied Section 109(a) in any event based on pre-petition retainers and granted recognition.[3]

Taken together, these decisions underscore that—even where courts disagree on the applicability of Section 109(a)—Chapter 15 recognition may turn on whether threshold eligibility requirements are satisfied as of the petition date, with limited ability to cure deficiencies post-filing.

Section 109(a) and Chapter 15 of the US Bankruptcy Code

Chapter 15 generally provides that a US bankruptcy court shall recognize a foreign proceeding that is pending in a country where the debtor has its COMI or an establishment. Although not part of Chapter 15, Section 109(a) provides that only a "person that resides or has a domicile, a place of business, or property" in the US may be a debtor under the US Bankruptcy Code.[4]

In re Barnet, the US Court of Appeals for the Second Circuit, which includes New York, held that Section 109(a) applies in Chapter 15 cases, reasoning that Section 103(a) of the US Bankruptcy Code makes Chapter 1 applicable to Chapter 15. Thus, in jurisdictions that follow *In re Barnet*,[5] courts also require that the debtor satisfy Section 109(a)—meaning that it must reside or have a domicile, a place of business, or property in the US. Other courts, including the US Court of Appeals for the Eleventh Circuit,[6] which includes Florida, have reached the opposite conclusion, holding that Section 109(a) does not apply to Chapter 15 cases. Despite the doctrinal split, courts in both camps have converged on a practical expectation that some US nexus must exist as of the filing date.

1 *In re Siu-Fung Ceramics Holdings Ltd.*, No. 24-33299, 2026 WL 382424 (Bankr. S.D. Tex. Feb. 10, 2026).
2 *In re Geden Holdings, Ltd.*, 674 B.R. 732 (Bankr. S.D. Tex. 2025).
3 *In re Venus Capital Management,* Case No. 25-10709 (Bankr. D.R.I. Mar. 2, 2026).
4 11 U.S.C. § 109(a).
5 *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet),* 737 F.3d 238 (2d Cir. 2013).
6 *In re Al Zawawi*, 97 F.4th 1244 (11th Cir. 2024).

At the bankruptcy court level, decisions reflect this divide. In *Siu-Fung*, a bankruptcy court in the Southern District of Texas adopted *Barnet* and held that Section 109(a) applies to Chapter 15. In *Venus Capital*, a bankruptcy court in the District of Rhode Island followed *Al Zawawi* and held that Section 109(a) does not apply. The court in *Venus Capital* further observed, however, that the debtors would have satisfied Section 109(a) through pre-petition retainers in any event. Thus, the reasoning in *Venus Capital* is consistent with *Siu-Fung* in emphasizing the practical importance of identifying a US asset as of the Chapter 15 filing date.

Petition-date or recognition-date measurement of COMI and Section 109(a)

In re Geden Holdings, Ltd. (Bankr. S.D. Tex. 2025)

In re Geden Holdings, Ltd. addressed whether COMI was established as of the Chapter 15 petition date.

Geden, a Maltese-registered shipping enterprise, was placed into liquidation in 2017. After a prolonged period of inactivity, a Chapter 15 petition was filed in April 2025, seeking recognition of the Maltese proceeding.

The court denied recognition. Under applicable law in the Fifth Circuit, which includes Texas, COMI is assessed as of the Chapter 15 petition date, not the date the foreign proceeding was commenced.[7] The absence of substantive liquidation activity over a multi-year period therefore weighed against recognition. No liquidator served from 2018 to 2023, and the subsequently appointed liquidator had not undertaken material steps typically associated with a liquidation, such as engaging creditors, conducting investigations, or administering assets.

The court concluded that these circumstances were insufficient to establish COMI or an establishment in Malta as of the Chapter 15 petition date. The court did not separately address Section 109(a); the petition was denied solely on COMI and establishment grounds, and the Section 109(a) question was not reached. The decision also reflects that a presumption of COMI based on a registered office may be rebutted where the underlying proceeding lacks meaningful activity.

The court's analysis highlights that a foreign proceeding that becomes dormant may not maintain its presumptive COMI if the foreign representative does not take substantive steps in the proceeding prior to the filing Chapter 15.

In re Siu-Fung Ceramics Holdings Ltd. (Bankr. S.D. Tex. 2026)

In *Siu-Fung*, the US Bankruptcy Court for the Southern District of Texas addressed whether Section 109(a) was satisfied where the debtor's only alleged US asset was a retainer deposited after the Chapter 15 filing.

Courts applying Section 109(a) in Chapter 15 cases generally interpret the property requirement broadly. Even nominal assets—such as an undrawn retainer held in a US account—may be sufficient.

Although there was a retainer in *Siu-Fung*, the dispositive issue was timing. The foreign representative relied on a $1,200 retainer held in a US counsel's IOLTA account, but the retainer was not deposited until approximately nine months after the Chapter 15 petition was filed.

Section 109(a) uses the present tense, requiring that a debtor "have" property in the US Courts have therefore generally assessed eligibility as of the petition date. Because the retainer, the only US property the debtor held, did not exist as of the petition date, the court held that Section 109(a) was not satisfied and denied recognition. The decision illustrates that post-petition efforts to manufacture US assets will not cure eligibility defects.

In re Venus Capital Management (Bankr. D.R.I. 2026)

In *Venus Capital*, the Bankruptcy Court for the District of Rhode Island considered five simultaneously filed Chapter 15 petitions seeking recognition of foreign proceedings in Mauritius and the British Virgin Islands. The court held that Section 109(a) does not apply to Chapter 15 cases, adopting the Eleventh Circuit's approach in *Al Zawawi* and reasoning that Section 1517's enumerated requirements for recognition are exclusive. The court added, however, that the debtors would have satisfied Section 109(a) in any event through pre-petition retainer accounts held with US counsel in Rhode Island, confirming that—even where Section 109(a) is deemed inapplicable—courts may still consider similar indicia in assessing the overall propriety of recognition. Recognition was granted.

7 *Lavie v. Ran (In re Ran),* 607 F.3d 1017, 1025 (5th Cir. 2010).



In re British American Insurance Company Limited (Bankr. S.D. Fla. 2010)

In contrast to *Geden* and *Siu-Fung*, a minority approach has reached a different conclusion. *In re British American Insurance Company Limited*, a bankruptcy court held that Section 109(a) eligibility should be assessed as of the recognition hearing rather than the Chapter 15 petition date, focusing on Section 1517(a)'s directive that a court "shall" enter an order recognizing a qualifying foreign proceeding after notice and a hearing, meaning at the time the court acts and not at the time the Chapter 15 petition is filed.[8] The petition-date approach, however, remains the prevailing framework and the recognition hearing approach has not been adopted to date by any Circuit Court of Appeals.

Key Takeaways and Filing Considerations

Although *Siu-Fung*, *Geden*, and *Venus Capital* reflect a continuing divergence in authority as to whether Section 109(a) applies in Chapter 15 cases, these decisions collectively reinforce a common practical constraint: eligibility for recognition is highly sensitive to the conditions that exist as of the petition date. Courts have consistently declined to give effect to post-petition efforts to establish US property or otherwise cure deficiencies in COMI or establishment.

As a result, the risk of denial may arise not from the substantive difficulty of meeting the statutory requirements—given the relatively low threshold for US property or activity—but from failure to ensure that those requirements are satisfied at the correct point in time. In this respect, the petition date operates as a hard boundary for both Section 109(a) eligibility (where applicable) and COMI analysis in most jurisdictions.

These decisions therefore underscore that Chapter 15 filings require careful pre-filing structuring, including confirmation that any US nexus—whether in the form of retainer funds or other minimal property—and sufficient ongoing activity in the foreign proceeding are established prior to filing and can be substantiated as of the petition date.

8 *In re British American Insurance Company Limited,* 425 B.R. 884, 909–10 (Bankr. S.D. Fla. 2010).



The following are several practical considerations that foreign representatives and their advisors should consider before filing a petition under Chapter 15:

- Applicability of Section 109(a): Treat Section 109(a) as a threshold requirement in jurisdictions that follow *Barnet*, including the Southern District of Texas.
- Satisfying the US property requirement: Ensure that at least minimal US property exists prior to filing. Courts have held that even nominal assets—such as a pre-petition retainer maintained in a US account—may be sufficient.
- Timing of eligibility: Both Section 109(a) and COMI are typically assessed as of the Chapter 15 petition date. Confirm that all eligibility criteria are satisfied as of the petition date.
- Ongoing activity in foreign proceedings: As reflected in *Geden*, a foreign proceeding may not support recognition where there has been an extended absence of substantive activity prior to the Chapter 15 filing.

In practice, advance coordination with US counsel to establish a qualifying US asset prior to filing may be a low-cost but critical step in mitigating recognition risk.

Canadian cross-border update: The cannabis restructuring

Ryan Manns and Jennifer Stam

Overview

Canada and the US share a long history of cooperation when it comes to cross-border restructuring. For decades, the legislation of both countries has provided a framework for recognition and the courts in each jurisdiction have shown great deference and reciprocity in facilitating cross-border filings. The reciprocity shown has been at times nuanced, where the local laws of the secondary jurisdiction are more restrictive than in the primary jurisdiction.

As discussed in greater detail below, a key example of these limitations has been in the case of the cannabis industry where, since 2018, the sale and distribution of cannabis is legal in Canada, but in the US, has not been legalized at the federal level. However, the recent filings of Cannabist Company Holdings Inc. ("Cannabist") show that there may be a path forward yet for future cross-border cannabis filings in both Canada and the US.

Cannabis restructuring in Canada

In 2018, the Government of Canada enacted the *Cannabis Act*, thereby legalizing and establishing the regulatory framework for the production, distribution, sale and possession of cannabis (and related services) in Canada. In addition to the *Cannabis Act*, several provinces have enacted provincial legislation that also regulates cannabis operations in their provinces.

After an initial and short-lived boom, by 2019, the cannabis market began to show severe signs of distress and in the past six years, cannabis restructurings under the *Companies' Creditors Arrangement Act* (CCAA) in Canada have become commonplace within Canadian restructuring and have not been limited to companies with operations in Canada. Indeed, given the restrictions in the US (discussed below), many operators who operate legally at the state level structure with Canadian parents to access the Canadian public markets. However, until recently, where Canadian parent companies have filed for CCAA protection in Canada, state-level solutions for operations have been limited.

Cannabis restructuring in the US

Cannabis companies in the United States have not historically been able to avail themselves of restructuring under the Bankruptcy Code—until now. For years, most distressed cannabis operators have been forced to rely on state-law alternatives to formal restructurings, out-of-court restructurings, and piecemeal asset sales, rather than centralized restructuring proceedings.

Recently, some US courts have permitted cannabis-adjacent entities to remain in US bankruptcy proceedings where the business is adequately removed from federally illegal activity.[1] In a landmark ruling on 9 May 2026, Judge Brendan L. Shannon of the US Bankruptcy Court for the District of Delaware granted recognition of the Cannabist Canadian restructuring proceedings, validating the thesis that Chapter 15 constitutes a viable path for domesticating the foreign restructurings of foreign cannabis companies with US operations.[2]

1 Notably, on December 18, 2025, Executive Order 14370 directed the US Attorney General to take steps to reschedule cannabis from Schedule I to Schedule III under the CSA. The DOJ order rescheduling marijuana to Schedule III does not automatically grant cannabis companies access to federal bankruptcy protection, though it significantly improves their financial viability and may shift how courts handle their cases. While rescheduling does not change the law, it may influence the discretion of the judiciary and the Department of Justice, and whether medical cannabis companies can avail themselves of relief under the Bankruptcy Code remains to be determined.
2 Order Granting Recognition of Foreign Main Proceeding and Request for Certain Related Relief ¶ 3, *In re The Cannabist Co. Holdings Inc.*, No. 26-10426 (BLS) (Bankr. D. Del. May 9, 2026), ECF No. 82 [hereinafter *Recognition Order*].



Cannabist overview

On 25 March 2026, Cannabist filed for CCAA protection in Canada with a view toward seeking recognition of the CCAA proceedings pursuant to Chapter 15.[3] Until now, the US bar to Chapter 11 filings had dissuaded financially distressed cannabis entities from pursuing Chapter 15 cases.

The Cannabist US and Canadian filings helped to facilitate the implementation of a sales process, including the purchase of Cannabist's Ohio and Delaware operations. The Chapter 15 filing also sought to leverage the automatic stay to prevent the IRS from asserting a federal tax lien.[4]

The Cannabist debtors were limited to Canadian parent holding companies and the cannabis cultivation, manufacturing and retail operations were conducted through separate non-debtor subsidiaries. By structuring the filing in this way, the Chapter 15 petitions avoided requiring the Bankruptcy Court to directly administer an ongoing cannabis business or exercise jurisdiction over assets and operations that remain prohibited under federal law.

As for the operating subsidiaries, the automatic stay only applied to the debtor and did not apply to non-debtor affiliates or guarantors—meaning the US operating companies did not benefit directly from the Chapter 15 stay and remained outside the formal scope of the insolvency proceedings.[5]

Key takeaways from the ruling

In its 9 May 2026 ruling, the US Bankruptcy Court for the District of Delaware granted recognition under Chapter 15 of the Bankruptcy Code to the Cannabist Canadian restructuring proceeding. The court's findings and order confirmed that all applicable statutory prerequisites had been met:

- The Debtors have property in the United States and are eligible to be debtors in a Chapter 15 case pursuant to Sections 109 and 1501 of the Bankruptcy Code.[6]
- The case was properly commenced pursuant to Sections 1504, 1509, and 1515 of the Bankruptcy Code.[7]
- The Canadian Proceeding is granted recognition as a foreign main proceeding as defined in Section 101(23) of the Bankruptcy Code pursuant to Section 1517(a) of the Bankruptcy Code.[8]

3 Chapter 15 of the US Bankruptcy Code allows US courts to recognize foreign insolvency proceedings and extend certain protections to the debtor's US property.
4 *See id.* (describing the sales process encompassing Cannabist's Ohio and Delaware operations and the debtors' use of the automatic stay to forestall an IRS federal tax lien).
5 *See Recognition Order* ¶ 5(a).
6 *Recognition Order* ¶ E.
7 *Id.* ¶ F.
8 *Id.* ¶ 3; *see also id.* ¶¶ J–L.

Among the significant protections extended by the recognition order:

- The automatic stay set forth in Section 362 of the Bankruptcy Code applies with respect to the Debtors and the Debtors' property that is within the territorial jurisdiction of the United States.[9]
- All persons and entities are enjoined from seizing, attaching, and enforcing or executing liens or judgments against the Stay Parties' (as defined in the Recognition Order) property in the United States or from transferring, encumbering, or otherwise disposing of or interfering with the Stay Parties' assets or agreements in the United States without the express consent of the Foreign Representative, and are enjoined from commencing or continuing any judicial, administrative, or other action or proceeding involving or against the Stay Parties or their assets in the United States.[10]
- All counterparties to a lease of premises or other executory contract that the Debtors or their direct and indirect subsidiaries are party to or guarantor of, in respect of property located within the United States, are prohibited from taking any steps to cancel, terminate, or modify such leases or executory contracts for any reason, including non-payment of rent and/or due to any provision conditioned upon commencement of the Canadian proceeding or a case under the Bankruptcy Code or the insolvency or financial condition of the Debtors or any of their affiliates.[11]
- The administration, realization, and distribution of all or part of the Debtors' assets within the territorial jurisdiction of the United States is entrusted to the Foreign Representative, who is established as the exclusive representative of the Debtors in the United States.[12]

Conclusion

Given that US recognition of cannabis restructurings has thus far been limited to Canadian holding companies, it remains to be seen in which instances—and to what extent—US Bankruptcy Courts will extend recognition to Canadian cannabis restructurings more broadly.

Nonetheless, the recognition of Cannabist's CCAA proceeding under Chapter 15 by the US Bankruptcy Court for the District of Delaware represents a meaningful development in cannabis restructuring law, demonstrating a creative cross-border structure that pairs Canadian CCAA eligibility with Chapter 15 recognition in the United States.

9 *Id.* ¶ 5(a).
10 *Id.* ¶ 8(b)–(d).
11 *Id.* ¶ 8(e).
12 *Id.* ¶ 11.

English High Court considers the public policy exception to cross-border recognition

Jack Mead and Helen Coverdale

Overview

The English High Court has confirmed the robustness of recognition under the Cross Border Insolvency Regulations 2006 (CBIR), the British enactment of the UNCITRAL Model Law on Cross-Border Insolvency 1997 (the Model Law).

Dismissing an attempt by Mr Shahzad (the Bankrupt) to set aside recognition of their Danish bankruptcy proceedings, the court in *Shahzad v Bramhelft* [2026] EWHC 1039 (Ch) ruled that the Danish bankruptcy qualified for recognition under CBIR because it was a legitimate, collective insolvency proceeding under the Danish court's supervision, and not (as the Bankrupt had argued) merely a vehicle to enforce Danish tax liabilities, contrary to public policy.

Recognition of insolvency proceedings and the public policy carve-out

Article 17 of CBIR requires recognition of foreign insolvency and bankruptcy proceedings where the process is collective, pursuant to a law relating to insolvency, subject to the foreign court's supervision and for the purposes of reorganization or liquidation. Where the debtor has their Centre of Main Interests (COMI) or an 'establishment' in the jurisdiction in which the insolvency proceedings have been opened, the proceedings should be recognized in all three constituent parts of Great Britain (England, Wales and Scotland) as 'foreign main proceedings' or 'foreign non-main' proceedings, respectively. There are strict exceptions where recognition may be refused, even though the above conditions are satisfied.

Article 6 allows the court to refuse recognition if it would be "manifestly" contrary to British public policy. As the Model Law is a voluntary, template piece of legislation, jurisdictions which choose to enact domestic laws based on the Model Law have autonomy and flexibility over how they do so. The Model Law itself envisages that individual states may wish to refuse recognition or assistance where it would be inconsistent with their national public policy. The Model Law text also contemplates states choosing whether the public policy exception should be adopted in broader or narrower terms, as deciding whether or not to include the word "manifestly" in the exception is left to the discretion of adopting states.

Great Britain chose to include the (arguably, stricter) word such that, under CBIR, recognition of foreign proceedings can only be rejected where they are considered 'manifestly' contrary to public policy:

> *"Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Great Britain or any part of it"* (Article 6, CBIR).

Nevertheless, there has been relatively little guidance from Parliament or the courts on the circumstances in which the exception might apply. In 2024, the UK Supreme Court in *Kireeva v Bedhamova* clarified that the exception is a narrow one. In that case, the issue before the court was whether a Russian trustee should be granted assistance in relation to real property owned by the Russian bankrupt in London, England. The Supreme Court primarily was concerned with public policy principles under the English common law, specifically in relation to immovables such as land. The 'immovables principle' provides that any questions relating to interests in land (and other immovable property) should be governed solely by the laws and courts of the country in which the property is situated. However, the Supreme Court also took the opportunity to comment on CBIR, observing that provided the relevant insolvency proceeding satisfies the prerequisite conditions *and does not fall within the public policy exception*, the court is obliged to recognize the proceedings.



In a unanimous judgment, the Supreme Court concluded that the immovables principle was a creature of public policy:

"...to enable courts in [the UK] to assist a foreign trustee in bankruptcy by appointing a receiver with a power of sale over immovable property [in the UK] must be a matter for [the UK] Parliament and not for the courts. It would not involve an incremental development of the common law but a substantial departure from the existing ***law and the principles of public policy to which it gives effect****. In particular, the* ***considerations of national sovereignty*** *which underpin the immovables rule require that such a development should have the approval of Parliament."*[1] *(Emphasis added).*

Matters of national sovereignty are perhaps an obvious area where one would expect public policy considerations to be engaged. The *Shahzad v Bramhelft* decision has provided the High Court with the opportunity to consider the role of public policy in cross-border insolvencies in a different context; in this case, the scope of the public policy exception to recognition of foreign bankruptcy proceedings under CBIR.

Facts of *Shahzad v Bramhelft*

On the petition of the Danish tax authority, the applicant was adjudged bankrupt by the Danish Commercial and Maritime Court on 16 December 2022. The Danish trustee, Mr Bramhelft (the Trustee), obtained recognition in England on 31 January 2025 on the basis that the Danish proceedings were 'foreign main proceedings.' The Bankrupt, who had not attended the recognition hearing, then applied to set aside the recognition order on public policy grounds.

The Bankrupt argued that the bankruptcy was effectively a tool to collect Danish tax liabilities and that the Trustee was acting in the interests of the Danish tax authority. Article 13 of CBIR modifies the traditional bar on enforcing foreign tax laws by providing that foreign tax authorities may prove for the tax debt, just like any other creditor.

By contrast, the Trustee argued the bankruptcy was a qualifying insolvency proceeding, with independent oversight, and diverse creditors involved. The Danish tax authority was not the only creditor, and the Trustee submitted that there was no evidence of any control or improper influence in the bankruptcy proceedings by the tax authority.

1 [2024] UKSC 39 at [para 103]

Decision of the English Court

The High Court dismissed the Bankrupt's challenge to the recognition order. The evidence demonstrated a genuine, collective process governed by Danish bankruptcy law, with the Trustee owing duties to the Danish court and to the general body of creditors on a *pari passu* basis. The judge, Insolvency and Companies Court Judge Agnello KC, distinguished previous cases where the foreign state entity was the sole beneficiary of proceedings. In the present case, the Danish tax authority was not the only creditor, or even a dominant creditor: the aggregate proved claims were almost DKK32.5 million, of which the Danish tax authority was owed approximately DKK3.18 million. In other words, the tax claims accounted for less than 10 percent of the total debt.

Arguments that tax collection was the dominant purpose of the proceedings therefore lacked any clear evidential basis. The judge determined that the Trustee acted in the interests of all creditors and the fact that the Danish tax authority had provided funding for the bankruptcy proceedings was not evidence of impropriety or direct enforcement of tax claims by the Danish tax authority. There was simply no evidence that the Danish bankruptcy was for the benefit of only the Danish tax authority.

Conclusion: Three key takeaways for cross-border recognition applications

- Recognition under CBIR will sustain challenge where the foreign process is demonstrably collective, court supervised and insolvency law-based.
- The public policy exception to recognition and assistance is narrow; in a similar case, a challenger must produce evidence that the proceeding is in substance a revenue enforcement exercise. It is insufficient merely to assert that a tax authority has petitioned for the insolvency, funded the proceedings or is a large creditor.
- Debtors contemplating challenges to recognition on public policy grounds under CBIR should anticipate the high evidential burden.

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