IAN FLETCHER INTERNATIONAL INSOLVENCY MOOT COMPETITION 2025

NUZILIA BANKRUPTCY COURT

In the matter of: Fairland Locomotors, Fairland Aviation, Fairland Operations, Debtors v. Dreamland Locomotors, Dexter Aviation, Bridgerton LLP. Creditors	Case No.: 25-12706

SUBMISSION FOR PETITIONER – REPRESENTED BY TEAM 04

a. ORDER OF CONSOLIDATION OF FAIRLAND COMPANIES UNDER CHAPTER 15 SHOULD BE RECOGNIZED AND ENFORCED BY COURT OF NUZILIA

1. Foreign Representative ("FR") has Locus Standi to apply for Legal Recognition.

1.1. Under §1509, FR can **explicitly commence recognition** under §1515.

1.2. Requirement of foreign recognition under §1517 needs **compliance with due process of law**.[1] Criteria[2] including creditors' equitable treatment, no allegations of inherent flaw in Utopian proceedings and the condition of 75% creditor approval,[3] prove compliance.

1.3. The Second Circuit **allows a low threshold**[4] for recognition if debtor has a place of business in the USA.[5] This is met as Nuzilian-incorporated Rover Capital owns direct and indirect equity in the debtors.

1.4. Corruption allegations[6] cannot stand as creditors were given a **due chance to be heard** and have had agency to appeal.

[1] Re Betcorp Ltd. CLOUT 927.
[2] Ibid.
[3] Problem [24].
[4] Re Olinda Star Ltd., 614 B.R. 28.
[5] Re Barnet, 737 F.3d 238, §109(a).
[6] Perry (n 6).

1.5. Consolidation is inherent to achieve the reorganisation's success. Thus, **recognition was sought for a proper purpose**.[7]

2. Utopian Proceedings is a Foreign Main Proceeding ("FMP").

2.1. FMP takes place in the state of the debtor's COMI.[8] COMI is an objective[9] fact-sensitive enquiry of the location of debtor's central administration[10] ascertainable by third parties.[11] It is presumed to be in the debtor's registered office.[12] Here, **Article 16(3) presumes Utopia COMI**[13] as parent and subsidiary company's incorporation, i.e., Fairland Loco ("F-Loco") and Fairland GO ("F-GO") respectively, is in Utopia. Further, per **Fletcher's Real Seat theory**,[14] Utopia retains F-Loco's, F-AV's and F-GO's ("Fairland Group") legal personality.

2.2. Courts are hesitant to accept rebuttal to the presumption[15] when central administration lies in the same location as registered office.[16] Third-party creditors can only rebut factors of public knowledge, excluding those discovered upon conducting enquiries.[17] Burden to rebut[18] lies on the FR[19] when recognising FMP, requiring a high threshold of transparent and ascertainable[20] factors. Utopia being a **'corporate domicile'**[21] (i.e., country of incorporation)[22] **renders the rebuttal impossible.**

2.3. Fairland Group's **operational management**[23] including for F-AV (which despite being established under Extravaganza's laws, is dependent on Utopian incorporated F-GO for all operational and logistical requirements) and **interests**[24] are regularly administered from Utopia.

2.4. Utopia COMI is also proved by:

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[7] Octaviar (n 7).
[8] UNCITRAL Model Law Cross-Border Insolvency 1997, (MLCBI) Article 2(b).
[9] UNCITRAL Model Law Cross-Border Insolvency with Guide to Enactment 2013 (GE) [145].
[10] Interedil v. Fallimento [2011] EUECJ C-396/09 [50].
[11] Stanford International Bank [2011] Ch 33 [57].
[12] MLCBI 1997, Article 16(3).
[13] Re Eurofoods IFSC Ltd [2006] ECR 3854, [17] ,[15].
[14] Ian Fletcher, Insolvency in Private International Law, (2nd ed., 2005), 141.
[15] Interedil (n 13).
[16] Ibid [50].
[17] Stanford (n 12).
[18] GE [143].
[19] In re Tri-Continental 349 BR 627.
[20] Interedil (n 13) [32].
[21] Fletcher (n 16), 143.
[22] Dicey, Morris and Collins, The Conflict of Laws, (14th edn, 2006), 1335.
[23] Working Group V, Report on Interpretation and Application of Selected Concepts of MLCBI relating to COMI (A/CN.9/WG.V/WP.93/Add.2), [28-29].
[24] GE [145].

2.4.1. Head Office Functions Test[25] which examines company's policy decisions,[26] executive decisions and overall administration[27] of debtor's interests,[28] all rooted in Utopia.

2.4.2. Nerve Centre Test[29] identifies the 'nerve centre'[30] (where debtor controls the corporation). Fairland Group (a family-held enterprise residing in Utopia held 95% equity) exercised board and voting rights from Utopia.

2.4.3. Command and Control Test[31] analyses debtor's headquarters[32] and corporate[33] management,[34] all lie in Utopia. F-Loco's prime decision to incorporate two wholly owned subsidiaries (i.e., F-AV and F-GO) also arose in Utopia.

2.5. COMI is equated to location of the debtor's **financial activities and economic interests:**[35]

2.5.1. All **third-party supply contracts**[36] supporting F-AV were organised by F-GO from Utopia to reduce F-AV's liability.[37]

2.5.2. The inter-company loan of 7-million USD[38] and 2 corporate guarantees financed by F-Loco along with 4 personal guarantees,[39] (2 financed by Grant and 2 by Gem Fairland) prove that most of the **financing was ultimately authorised**[40] from Utopia. The debt of F-AV was meant to be funded from income of a profit-sharing agreement organised in Utopia.[41]

2.5.3. Grant Fairland presented BoD's approval under Utopian Bankruptcy law to commence **restructuring proceedings**[42] and all **reorganisation efforts**[43] including subsequent financial agreements.

2.6. For determining **COMI in enterprise groups**, courts consider factors[44] like: (a) Whether management is consolidated, as it is in Utopia. (b) Incorporation of group members, with 2 of 3 member companies in Utopia. (c) Level of integration and shared

[25] Re Energotech [2007] BCC 123 (Ch), [26-27].
[26] Re Collins [2006] BCC 606.
[27] Eurofoods (n 8) [17-23].
[28] Interedil (n 2).
[29] Re Fairfield [2010] 440 B.R. 60.
[30] Hertz v. Friend [2010] 559 U.S. 77.
[31] Fletcher (n 16).
[32] Re Tradex AG 384 BR 34. [36-37].
[33] Ibid [92-93].
[34] US Foodservice v LIR (2008) US Dist. Lexis 2366, [8–9].
[35] Eurofood (n 8) [32].
[36] Ibid.
[37] Problem [9].
[38] Problem [16].
[39] Problem [18].
[40] MPOTEC GmbH [2006] B.C.C. 681.
[41] Problem [19].
[42] Re Hellas Telecommunications (Luxemburg) II SCA [2010] BCC 295, [5], [14-15].
[43] Hellas Telecommunications (Luxembourg) II SCA [2009] EWHC 3199 (Ch).
[44] Collins v Oilsands 484 B.R. 593.

management, with F-AV and F-GO having the same BoD and KMPs[45] – establish Utopia's COMI for Fairland Group.

2.7. Thus, **proceedings in Utopia constitute FMP.**

3. Fairland Group must be consolidated.

3.1. Proceedings must be defined as **planning proceedings** under MLEG.[46] Any planning proceeding[47] must be a main proceeding.[48] MLCBI and MLEG define main proceedings[49] ad verbatim. The Utopian proceedings are main proceedings under MLCBI, they fulfil the criteria of MLEG.

3.2. Another criterion[50] to define Utopian proceedings as the main proceeding is to check whether the Court has **jurisdiction to administer a main proceeding**, which is proved.

3.3. Planning proceedings must[51] require participation of one/more enterprise group members to develop a group insolvency solution. The latter must intend to add value to enterprise group/member.[52] This is intended to be flexible in the mode of integration between its members.[53] The **reorganization plan is the group insolvency solution**. Thus, **consolidation is inherent to implementing a group insolvency solution**, i.e., the reorganization plan itself as part of the established planning proceeding.

3.4. A GR can be the insolvency representative under main proceedings.[54] Thus, the requirement is fulfilled as the FR is a GR.[55] **Substantive consolidation is the mode of integration** of the group insolvency solution, in a planning proceeding.[56]

3.5. Creditors have argued against consolidation on **unfairness to F-GO**. However, the group insolvency solution may maintain value of a member.[57] The reorganization plan avoids devaluing F-GO's assets, only changing F-GO's equity shareholding.[58]

[45] Problem [8].
[46] UNCITRAL Model Law on Enterprise Group Insolvency 2019, (MLEG) Art. 2(g).
[47] MLEG Art. 2(g), Art. 2(j).
[48] LG (n 38) 33.
[49] Ibid.
[50] MLEG Art. 2(g).
[51] LG (n 38) 32.
[52] LG (n 38) 32.
[53] Ibid.
[54] Ibid.
[55] MLEG, Art. 2(e).
[56] LG (n 38) 32,33.
[57] Ibid.
[58] Problem [21].

4. Consolidation does not breach Public Policy.

4.1. Though there is a public policy exception to general presumption of comity,[59] Nuzilia's adoption of MLCBI with the threshold of **'manifestly contrary',** indicates its intent to strictly apply it.[60] It is a last resort and construed restrictively,[61] especially under international cooperation and foreign law recognition matters.[62]

4.2. This cannot simply be invoked because the original and enforcing court each applied differing laws.[63] Recognition cannot be denied because Utopia's approval of release of third-party claims contradicts Nuzilian law.[64] It would instead **fall within international public policy** which overrides domestic public policy.[65]

4.3. Additionally, **third-party releases may not be violations** of public policy under §1506.[66] Further, creditors receiving lesser protection in a foreign proceeding compared to a domestic court is not 'manifestly contrary'.[67]

4.4. Nuzilian Courts must **adhere to comity**, giving due regard to the Utopian Supreme Court's interim declaration of exclusive jurisdiction.[68] Chapter 15 was adopted to foster comity as a 'central and principal objective'[69] and an 'essential tenet'[70] of MLCBI.

4.5. Nuzilia's understanding of comity recognizes deference to foreign courts[71] and **regard to international duty and convenience**.[72] It ensures 'predictability and benefits bankruptcy proceedings administering property abroad',[73] guaranteeing uniformity in disposing off the insolvency estate which vests with one entity, ensuring equitable distribution.[74] All debts discharge should be recognized universally[75] for a rehabilitative insolvency, failure of which would impinge adjudicative comity. [76] Thus, this consolidation maintains efficiency of cross-border insolvencies.

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[59] MLCBI, art. 6; US Code, Title 11 Ch:15, §1506.
[60] Eurofoods (n 18) [63].
[61] Re Lupatech SA, 611 BR 496, 502.
[62] UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective 2013, (JP) [49], [16]; In re Ephedra Products Liability Litigation, 349 B.R.333.
[63] Re Qimonda [2010] 433 BR.
[64] OAS S.A. CLOUT 1629; GE [30].
[65] Tampico v. Productos CLOUT 1721.
[66] Re Sino-Forest 501 B.R. 655, 665–66.
[67] Re ABC Learning [2010] 445 BR.
[68] Problem [31].
[69] Hilton v Guyot, 159 US 113, 164 (1895).
[70] JP [14].
[71] Vitro Noteholders v Vitro SAB De CV, CLOUT 1310.
[72] Hilton (n 76).
[73] ABC (n 74).
[74] Paul Omar, International Insolvency Law: Reforms & Challenges, Edition 1, Routledge, 46.
[75] Ibid 47.
[76] William S. Dodge, International Comity in American Law, Columbia Law Review, Vol. 115, no. 8.

5. No Violation of Fiduciary Duty.

5.1. Fiduciary duty is owed wholly to the corporation[77] and not **to creditors preceding insolvency**.[78] Expansion of fiduciary duties in 'zone of insolvency' has been rejected.[79] Director's duties to creditors would not extend beyond contractual terms.[80] Here, contractual obligations only extend to Dexter Aviation, which were vitiated due to the pandemic. The pandemic's unforeseeable nature makes it impossible to guard against contractually, waiving all liabilities under common law's 'impossibility' standard. [81]

5.2. Recognizing creditors' rights conflicts directors' duty to maximize the insolvent corporation's value.[82] The **Business Judgement Rule** waives liability if steps were taken in the corporation's best interests.[83] This is a valid defense even in relation to creditors.[84] Directors must serve the entire corporation and not a specific interested group.[85] Further, if approved by relevant stockholders,[86] this rule trumps courts' intervention.[87] F-AV's directors were acting in its best interest by including F-GO through the profit-sharing agreement and consolidation. Without this, it would have led to complete liquidation of F-AV and F-Loco, indicating directors' good faith to secure the highest value (*Revlon* standard), [88] and their good business reason (*Lionel* test).[89]

5.3. Admission of creditors' claims would also affect credibility of the **insolvency estate**.[90] Directors have a statutory obligation during insolvency,[91] to protect existing asset value for eventual distribution.[92] Once insolvent, creditors are also precluded from continuing to pursue derivative claims for fiduciary duty breach that could have been enforced before bankruptcy.[93] Dexter Aviation's claims to its guarantees[94] would be thus barred through Utopian Courts' approval,[95] preserving the estate.

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[77] Trenwick v. EY, 906 A.2d 168.
[78] NACEPF v. Gheewala, 930 A.2d 92.
[79] NACEPF (n 85) [101].
[80] Ibid [99].
[81] Kim v. Cent 70 N.Y.2d 900, 902–03 (1987).
[82] NACEPF (n 85) [103].
[83] Levandusky v. OFAAC 75 N.Y.2d 530 (1990).
[84] Angelo v. Allied 805 A.2d 221, 229.
[85] Geyer v. Ingersoll 621 A.2d 784, 789.
[86] Problem [22].
[87] Corwin v. KKR Holdings 125 A.3d 304.
[88] RBC v. Jervis, 129 A.3d 816.
[89] Re Lionel Corp 722 F.2d 1063.
[90] Kelli. A. Alces, Enforcing Corporate Fiduciary Duties in Bankruptcy, 56 U. Kan. L. Rev. 83, 90 (2007).
[91] MLCBI, art. 20; US Code, Title 11 Ch:15, §1520.
[92] Varallo & Finkelstein, Fiduciary Obligations of Directors of Financially Troubled Company, 48 BuS. LAW. 239, 244 (1992).
[93] iXL Enters v. G.E. Capital Corp., 167 F. App'x 824 (2d Cir. 2006).
[94] Problem [18].
[95] Problem [25].

5.4. There is also no breach, if directors' actions frustrated secured creditors from collecting on secured claims,[96] thus barring Dreamland Loco. Risky investment strategies successfully maximizing corporation's value do not impinge directors' fiduciary duty even if creditors bear risk of failure.[97] Thus, recognition must not be denied due to **pursuance of strategy** prioritising the corporation.

6. Thus, we urge this Court to declare that the:

6.1. FR has locus standi to apply for legal recognition;

6.2. Utopian proceeding is an FMP;

6.3. Fairland Group must be consolidated;

6.4. Utopian proceedings must be recognised;

6.5. Consolidation complies with Public Policy; and

6.6. Director's Fiduciary Duty has not been breached.

b. NUZILIAN COURT IS EMPOWERED TO GRANT THIRD PARTY CLAIMS

7. Non Consensual Releases of Third-Party Claims ("NCR") have statutory support.

7.1. The reorganisation plan releases all third party claims without consent of creditors.[98] §1521(a) and §1507(b) gives Bankruptcy Courts the power to provide **additional assistance** to foreign debtor. A Bankruptcy Court may allow relief post recognition which is not directly available.[99]

7.2. Post recognition reliefs are allowed under §1521(a) provided they meet principles of comity[100] read with §1507(b)[101] which lays down **three conditions of sufficient protection**:[102]

7.2.1. Just treatment includes a comprehensive procedure for distribution of assets to creditors.[103] No counter exists.

7.2.2. Protection of USA creditor claims[104] includes adequate notices to file a claim and no additional burden for a foreign creditor.[105] No such fact exists.

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[96] Nelson v. Emerson 2008 Del. Ch. LEXIS 56.
[97] Quadrant v. Vertin 115 A.3d 535.
[98] Problem [21].
[99] Re Condor, 627 B.R. 366, 376.
[100] Re PT Bakrie, 628 B.R. 859, 884.
[101] Re Bear Stearns 329 B.R. 325, 333.
[102] Re Intl. Banking B.S.C., 439 B.R. 614, 626–27.
[103] Re BoD of Telecom 528 F.3d 162, 170 (2d Cir. 2008).
[104] Re Hourani, 180 B.R. 58, 68.
[105] Re Treco, 240 F.3d 148, 158 (2d Cir. 2001).

7.2.3. Distribution of proceeds[106] is satisfied on merits of the reorganisation plan, which is not questioned.

7.3. Proceedings following a civilised jurisprudence **prove comity**.[107] No counter-allegation exists.

8. NCR is a valid subjective relief.

8.1. NCR has been granted[108] on **due process and a fair chance to be heard**. Utopian proceedings mandated credit approval of the reorganisation, which then fruitions the relief.[109]

8.2. The Second Circuit emphasizes on the **reorganization plan's importance**[110] and its **accomplishment**,[111] necessitating NCR. NCR is quid pro quo to the repayment model by the acquiring body, Rover Capital. This cannot coexist with non-debtor claims through the clean hands doctrine.

8.3. The Second Circuit noted contributions of **non-debtor liable parties in exchange** of release of claims against the debtor.[112] Rover Capital is funding the plan in exchange of NCR.

8.4. The Second Circuit has assessed detailed voting requirements to allow for NCR.[113] The reorganisation plan required a **75% credit approval** and **two-third majority was met**,[114] indicating a unanimous and direct approval, not requiring any nuanced judicial assessment.

8.5. Creditors have based their argument on Purdue Pharma[115] to establish invalidity of NCR. The Supreme Court explicitly noted that **bar on NCR is narrowed to Chapter 11 proceedings**,[116] not to Chapter 15.[117] The Chapter 15 order is unaltered even if NCR is barred under Chapter 11 as noted by a Bankruptcy Court.[118]

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[106] Ibid.
[107] Hilton (n 76).
[108] Re Agrokor 591 B.R. 163.
[109] Re Avanti Comm 582 B.R. 603.
[110] Re Drexel Burnham 960 F.2d 285, 293.
[111] Re AMP Network 599 B.R. 717, 727.
[112] Gillman v. Cont'l Airlines, 203 F.3d 203, 212–13.
[113] Agrokor (n 114).
[114] Problem [25].
[115] Purdue Pharma v. Harrington, 2024 WL 3187799.
[116] Ibid at 2 (emphasis).
[117] Antele, Miriam, Chapter 15 Loophole, INSOL International 2024. <https://www.insol.org/getmedia/3096b116-524f-4834-ae30-5bdc821f24dd/Chapter-15-loophole-implications-of-the-ruling-in-purdue-pharma-on-recognition-of-foreign-nonconsensual-third-party-releases.pdf>.
[118] Pan Brothers 22-10136 (MG).

9. Thus, this Court is empowered to pass an order granting NCR as:

9.1. There is a statutory ground; and

9.2. There is a threshold enabling Court's discretion.

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