**NUZILIA BANKRUPTCY COURT**

| In the matter of:<br>Aqualis Agribusiness Corp. & Ors.,<br>Debtors<br>v.<br>The Association of Environmental Victims of Extravaganza,<br>Creditor | Case No.: 25-12706 |
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**SUBMISSION FOR PETITIONER**
**REPRESENTED BY TEAM 34**

## I. UTOPIAN PROCEEDING QUALIFIES FOR RECOGNITION UNDER CHAPTER 15 OF NUZILIAN INSOLVENCY LAW ('NIL').

1. If the recognition petition satisfies the unambiguous[1] requirements of Section 1517(a),[2] NIL, the court must enter an order granting recognition of the foreign proceeding,[3] subject to Section 1506.[4] The Utopian proceeding qualifies as a Foreign Main Proceeding and it does not contravene public policy of Nuzilia, thus being eligible for recognition.

### 1.1 Proceeding in Utopia constitutes Foreign Main Proceeding ('FMP').

2. FMP is a proceeding pending in a place where the debtor has its centre of main interests ('COMI')[5] at the date of filing of the Recognition Application.[6] It limits the inquiry into COMI with the intent of harmonization of transnational insolvency proceedings.[7]
3. When the Recognition Application was filed, the four debtors were substantively consolidated as per the Reorganisation Plan passed in Utopia. Therefore, its collective COMI needs to be ascertained.
4. Though not defined in the Chapter 15 of NIL, there is a rebuttable presumption that the debtor's registered office is its COMI.[8] The rebuttal requires a high threshold of transparent and ascertainable[9] factors.

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[1] *Re Talas Qais Abdulmunem Al Zawawi,* 634 BR 11, 18 (Bankr. S.D. Fla. 2021).
[2] 11 US Code s 1517(a).
[3] *C.f. Jaffe v Samsung Elecs Co,* 737 F.3d 14, 24 (4th Cir. 2013).
[4] 11 US Code s 1506.
[5] 11 US Code s 1502(4).
[6] *Morning Mist Holdings Ltd v Krys,* 714 F.3d 127 (2nd Cir. 2013).
[7] *Lavie v Ran* 607 F.3d 1017 (5th Cir. 2010).
[8] 11 US Code s 1516(c).
[9] *Interedil v Fallimento,* [2011] EUECJ C-396/09 [32].

5. Courts are hesitant to accept rebuttal to the presumption when central administration lies in the same location as registered office.[10] The most important factors have been deemed to include the location of headquarters and management.[11] The country of incorporation[12] as well as Board of Directors[13] of the company are, in majority, the citizens of Utopia.
6. COMI is assessed holistically[14] on a case-by-case basis.[15] The following tests suggest that COMI is in Utopia.[16]
   6.1 Head Office Functions Test[17] examines company's policy decisions,[18] executive decisions and overall administration[19] of debtor's interests.[20]
   6.2 Command and Control Test[21] analyses debtor's headquarters[22] and corporate management.[23]
   6.3 Nerve Centre Test[24] identifies the 'nerve centre',[25] where debtor controls the corporation.

   The headquarters,[26] management[27] and strategic decision making[28] of the Aqualis Group remains in Utopia.
7. Recognition criteria under Section 1517[29] also include the presence of collective proceeding.[30] The proceeding must involve all of the creditors generally rather than just one or a few creditors.[31] Substantially all of the assets and liabilities of the debtor must be dealt with in the proceeding.[32]
8. For ascertaining COMI in an enterprise group,[33] some additional factors[34] are examined which includes consolidated management, Utopian incorporation of 3 out of 4 members and integrated international operations and shared management.[35]

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[10] ibid [50].
[11] *Kapila, Re Edelsten*, [2014] FCA 1112 [56–57].
[12] Dicey and others, *The Conflict of Laws* (14th edn, Sweet & Maxwell 2006) 1335.
[13] Problem [9].
[14] *Re Iovate Health Sciences International Inc. et al*, Case No. 25-11958 (MG).
[15] MLCBI Guide to Enactment 2013 [146].
[16] ibid.
[17] *Re Energotech,* [2007] BCC 123 (Ch) [26-27].
[18] *Re Collins,* [2006] BCC 606.
[19] *Re Eurofoods IFSC Ltd,* [2006] ECR 3854 *[17-23].*
[20] Interedil (n 9) [50].
[21] Ian Fletcher, *Insolvency in Private International Law* (2nd edn, New York Oxford University Press 2005) 141.
[22] *Re Tradex, AG* 384 BR 34 [36-37].
[23] *US Foodservice v LIR,* (2008) US Dist Lexis 2366 [8–9].
[24] *Re Fairfield,* [2010] 440 BR 60.
[25] *Hertz v Friend,* [2010] 559 US 77.
[26] Problem [4].
[27] Problem [9].
[28] Problem [10].
[29] *Re Betcorp,* CLOUT 927.
[30] MLCBI (n 15) [69].
[31] *Re Fairfield Sentry Ltd,* 714 F.3d 127, 136 (2d Cir. 2013).
[32] MLCBI (n 15) [70].
[33] UNCITRAL Legislative Guide on Insolvency Law Part III ('LG') [2].
[34] *Collins v Oilsands,* 484 BR 593.
[35] LG (n 33).

9. Thus, the proceedings in Utopia constitutes FMP.

**1.2 Proceeding in Utopia is not manifestly contrary to the public policy.**

10. There is a public policy exception to general presumption of comity.[36] Nuzilia's adoption of MLCBI with the threshold of 'manifestly contrary', indicates its intent to strictly apply it.[37] The word 'manifestly' was incorporated in the Model law[38] to act as a 'qualifier' of public policy.
11. The exception is a last resort and should be interpreted restrictively,[39] especially under international cooperation[40] and foreign law recognition matters.[41] It is invoked in exceptional matters of fundamental importance to the enacting State.[42]
12. In determining the application of the exception, courts focus on two factors, whether the foreign proceeding was procedurally unfair and whether the application of foreign law or the recognition would severely impinge the value of a statutory or constitutional right,[43] not merely on the ground that non-Nuzilian judgment differs from local public policy.[44]
13. Courts have indicated that the parties objecting to an action to be taken under the MLCBI should identify the fundamental policies that would allegedly be violated by the action,[45] which are not met by the creditors in this case.
14. The substantive consolidation is not contrary to NIL in itself.[46] Substantive consolidation of the estates has been granted when an individual controlled all companies as a single-enterprise with intertwined assets, liabilities and affairs.[47]
15. Though non-consensual third party releases are not permitted in Nuzilia's domestic proceedings,[48] it falls under international public policy which overrides domestic public policy.[49] Furthermore, third-party releases may not be violations of public policy under §1506.[50]
16. The difference in insolvency schemes does not imply violating the public policy of another State[51] and the different result due to such application is insufficient to support the

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[36] 11 US Code s 1506.
[37] *Re Eurofoods* (n 19) [63].
[38] MLCBI (n 15) [104].
[39] *Re Toft,* 453 BR 186,189 (Bankr. S.D.N.Y. 2011).
[40] *Re Vitro S.A.B. de CV,* 701 F.3d 1031 [88] (5th Cir. 2012).
[41] UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective 2013 [49], [16] ('MLCBI JP'); In *re Ephedra Products Liability Litigation* 349 BR 333.
[42] MLCBI (n 15) [104].
[43] *Re Gold & Honey,* 410 BR 357, 372 (Bankr. E.D.N.Y. 2009).
[44] *Compania Mexicana Rediodifusora Franteriza v Spann,* 41 F. Supp. 907, 908-09 (N.D. Tex. 1941), aff'd 131 F.2d 609 (5th Cir. 1942).
[45] *Re Toft* (n 39) [186, 195–196].
[46] *Re Rede Energia SA,* 515 BR 69 (Bankr. S.D.N.Y. 2014).
[47] *Re No Rust Rebar Inc,* 641 BR 412 (Bankr. S.D. Fla. 2022).
[48] Problem [27].
[49] *Tampico v Productos,* CLOUT 1721.
[50] *Re Sino-Forest,* 501 BR 655, 665–66.
[51] MLCBI JP (n 41) [30].

protection.[52] The differences need to be significant enough to warrant denial of recognition.[53]

17. Nuzilia's adherence to comity recognizes deference to foreign courts.[54] Chapter 15 was adopted to foster comity as a 'central and principal objective'[55] and an 'essential tenet'[56] of Model Law on Cross Border Insolvency ('MLCBI'). It ensures 'predictability and benefits bankruptcy proceedings administering property abroad'.[57] All debts discharge should be recognized universally[58] for a rehabilitative insolvency, failure of which would impinge adjudicative comity.[59]
18. Hence, the recognition of Utopian Proceeding under Chapter 15 is not 'manifestly contrary' to public policy.

## II. THE RELIEF SOUGHT, PARTICULARLY THE ENFORCEMENT OF THE PLAN AND THIRD-PARTY RELEASES, SHOULD BE GRANTED

19. Public policy is not violated by granting enforcement of the plan and third-party releases in Nuzilia as it is consistent with principles of comity,[60] fairness and equitable treatment of creditors and therefore, should be granted.

### 2.1 The non-consensual third-party releases ('NCTPR') should be granted.

20. Public policy has restrictive application[61] and means the most fundamental principles of state law[62] and is invoked under exceptional circumstances.[63] While NCTPR are not permitted in domestic Nuzilian proceedings, the same does not apply for Cross-Border proceedings.[64]
21. International public policy[65] recognises NCTPR as several countries have adopted insolvency frameworks and laid down safeguards relating to them. These countries include the U.K., Netherlands, etc.[66] The NCTPR within the plan also meet the seven factor test.[67]

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[52] *Re Qimonda AG Bankruptcy Litigation,* 433 BR 547, 567 (E.D. Va. 2010).
[53] *Re Black Gold SARL,* 635 BR 517 (B.A.P. 9th Cir. 2022).
[54] *Vitro Noteholders v Vitro SAB De CV,* CLOUT 1310.
[55] *Hilton v Guyot,* 159 US 113, 164 (1895).
[56] MLCBI JP (n 41) [14].
[57] *Re ABC Learning,* [2010] 445 BR 318 (Bankr D Del 2010).
[58] Paul Omar, *International Insolvency Law: Reforms & Challenges* (1st edn, Routledge, Chapman & Hall Inc 2024) 47.
[59] William S. Dodge, 'International Comity in American Law' (2015) 115 Columbia Law Review 8, 2108.
[60] MLCBI (n 15) [214].
[61] MLCBI (n 15) [104].
[62] *Re ABC Learning* (n 57).
[63] MLCBI (n 15) [104].
[64] *Re Credito SAB de CV SOFOM ENR* Case No 25-10208 (TMH) (Bankr. S.D.N.Y. 2025); *Re Odebrecht Engenhariae Construção S.A.* Case No 25-10482 (MG) (Bankr. S.D.N.Y. 2025).
[65] *Re Tampico* (n 49).
[66] Ilya Kokorin, 'Third-Party Releases in Insolvency of Multinational Enterprise Groups' (2021) 18(1) ECFR 107; Re Noble Group Ltd, [2018] EWHC 3092 (Ch); WHOA, arts 370, 372.
[67] *Class Five Nev Claimants* v *Dow Corning Corp*, 280 F3d 648, 658 (6th Cir., 2002).

22. The cancelling of cross-guarantee limits the ricochet claims which often undermine the restructuring process.[68] Successful restructuring requires preservation of group synergies and survival of other group members to both effect its reorganisation and continue its operational activity.[69] Without third-party releases, the subsidiaries will be forced into insolvency, leaving remote chances for the primary debtor's survival.[70]

**2.2 The enforcement of the plan is not manifestly contrary to the public policy of Nuzilia**

23. The plan is made in accordance with the laws of Utopia and meets the voting threshold for approval under the same.[71] No foundational bankruptcy policy is implicated when a court defers to a foreign jurisdiction's threshold for assessing consent. Courts should defer to principles of comity when a plan is passed by creditor majority as measured by foreign jurisdiction's rules, even if, such support is not to the same extent required under Domestic Restructuring voting thresholds.[72]
24. Upon recognising an FMP or FNMP, a court enjoys extensive latitude to grant the relief the foreign representative requests.[73] The court should merely ascertain whether foreign proceeding relief meets the receiving standards of fairness[74] and follows a civilized jurisprudence.[75]
25. Section 507[76] lays down the priority of claims. Tort claims are not priority claims[77] and occupy the lowest priority. The plan also adheres to the absolute priority rule[78] in NIL and non-identical treatment of claims and priority rules is insufficient to deny a request for comity.[79]
26. As per NIL, in a domestic restructuring, confirmation of a reorganization plan discharges a debtor's liability for 'any debt that arose before the date of such confirmation' whether or not the claim is allowed or slated to receive any distributions under the plan.[80] The present tort-claims fall under the ambit of pre-petition claims as the claims are based on pre-petition tortious conduct that arises out of a prepetition relationship between the claimant

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[68] *Re Noble* (n 66).
[69] Michelle M Horner, *Final Report of the ABI Commission to Study the Reform of Chapter 11* (ABI, 2014) 255.
[70] Ilya Kokorin (n 7).
[71] Problem [26].
[72] Thiago B. Junqueira, 'The Enforcement of Consensual Foreign Plans of Reorganization in Chapter 15' (2019) 35 EMORY BANKR. DEV. J. 81.
[73] *Re Sphinx Ltd* 351 BR 103, 112 (Bankr. S.D.N.Y).
[74] *Re SLS Capital S.A* 2015 Bankr LEXIS 2468.
[75] *Re RSM Richter Inc v Aguilar* 349 BR 333.
[76] 11 US Code s 105.
[77] 11 US Code s 1141(d)(3)(b); Matthew Petrie, 'When a Claim Arises and Why It Matters' (2007) 16 J.Bankr. L. & Prac. 599.
[78] 11 US Code s 1129(b)(2).
[79] *Re Sivec SRL* 476 BR 310, 324 (Bankr. E.D Okla. 2012).
[80] 11 US Code s 1141(d)(1).

and the debtor, in which case the debtor conduct test, relationship test, and fair contemplation tests are all satisfied.[81] Hence the claims ought to be discharged.

27. Moreover, the Extravaganza claimants will be subject to an intra-class cramdown, which is a part of NIL,[82] since the parties dissenting to the plan only amounted to one percent of the claims entitled to vote and it will be deemed as if they have accepted the plan. Cramdown provisions are found in almost all modern restructuring regimes, such as UK,[83] Germany,[84] Netherlands,[85] Canada.[86] If the intra-class cramdown provision is inapplicable in the pertinent matter, then the cross-class cramdown provisions[87] shall be made applicable as it does not unfairly discriminate among the same class of creditors and is fair and equitable. The fair and equitable condition is interpreted to involve absolute priority rule,[88] which has been followed by the reorganization plan.
28. Tort claims and trade claims do not fall under the same priority class in this case, as tort claims are general unsecured debt whereas trade and supplier claims are 'critical vendor' claims.[89] Labour claims are given priority[90] over general unsecured claims. Financial creditors are unsecured creditors and have been given the least priority, similar to tort and personal injury claims.
29. Regulatory fines that were imposed pre-petition are not admissible as debts under Utopian law.[91] Even under the NIL, environmental penalties do not have priority and may be discharged in bankruptcy.[92] Hence, the exclusion of the environmental and regulatory fines are not manifestly contrary to public policy of Nuzilia.
30. As the NIL provides equal treatment of both foreign and domestic creditors, the averment that the recognition shall deny the access to a forum capable of adjudicating the claims of Extravaganza citizens is specious.[93]
31. There is a dichotomy between domestic public policy and international public policy[94] with the latter only relating to matters of fundamental importance.[95] If the foreign forum provides a full and fair trial abroad before a court of competent jurisdiction, under a system of

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[81] *Rubinstein* v *Alaska Pac. Consortium* (Re New England Fish Co), 19 BR 323, 329 (Bankr. W.D. Wash 1982).
[82] 11 US Code s 1126(c).
[83] s 899(1) of Part 26 and s 901(F) of Part 26A of Companies Act, 2006.
[84] s 26, StaRUG.
[85] Art 384(4), WHOA, 2020.
[86] s 6(1), Companies' Creditors Arrangement Act,1985.
[87] 11 US Code s 1129(b)(2)(B).
[88] *Bank of America National Trust & Savings Association v 203 North LaSalle Street Partnership*, 526 U.S. 434, 469.
[89] *Re CoServ,* 273 BR 487 (Bankr. N.D. Tex 2002).
[90] 11 US Code s 507(a)(4).
[91] Problem [23].
[92] *Ohio v Kovacs*, 469 US 274 (1985); *South Coast Air Quality Management District v Exide Technologies*, 613 BR 79 (D. Del. 2020).
[93] 11 US Code s 1513.
[94] *Hartford Computer Hardware Inc,* 2012 ONSC 964 [17]-[18].
[95] *Re Ephedra* (n 41) [333, 336]; *Lavie* (n 7) [1017, 1021]; *Iida* v *Kitahara*, 377 BR 243, 259 (BAP 9th Cir. 2007).

jurisprudence likely to secure an impartial verdict between its own citizens and that of another country, and there is no evidence of prejudice in the court or in the system of laws under which it is sitting, the judgment should be enforced and not 'tried afresh.'[96] A difference in substantive and procedural rules is not in itself a ground to deny comity.[97]

32. Hence, the relief should be granted.

**Word Count: 2499**

[96] *Hilton* (n 55) [202–03].
[97] *Re Metcalfe & Mansfield Alternative Investments,* 421 BR 685.