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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	**Chapter 15**
ODN I Perfurações Ltda., *et al.*,[1]	**Case No. 23-10557 (DSJ)**
Debtors in a Foreign Proceeding	**(Joint Administration Pending)**

MOTION FOR (I) RECOGNITION OF FOREIGN PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) RECOGNITION OF BRAZILIAN CONFIRMATION ORDER AND RELATED EJ PLAN, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

[1] The debtors in these chapter 15 cases (the "Chapter 15 Cases"), along with each debtor's tax identification or corporate registry number, are: ODN I Perfurações Ltda. (CNPJ/ME No. 11.165.868/0001-68) ("ODN I Perfurações"), Odebrecht Drilling Norbe VIII/IX Ltd. (No. MC 245888) ("Norbe VIII/IX"), Odebrecht Drilling Norbe Eight GmbH (No. FN 34216i) ("Norbe Eight"), Odebrecht Drilling Norbe Nine GmbH (No. FN 342214g) ("Norbe Nine"), Odebrecht Offshore Drilling Finance Limited (No. MC 277889) ("OODFL"), ODN I GmbH (No. FN 321008x) ("ODN I"), Odebrecht Drilling Norbe Six GmbH (No. FN 347728s) ("Norbe Six"), and ODN Tay IV GmbH (No. FN 353359x) ("Tay IV").

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Rogerio Luis Murat Ibrahim, in his capacity as the authorized foreign representative (the "Foreign Representative")[2] of ODN I Perfurações and each of its affiliated debtors (collectively, the "Debtors") which are subject to the *recuperação extrajudicial* proceeding (the "Brazilian EJ Proceeding") in the 4th Business Court of the Judicial District of Rio de Janeiro, Brazil (the "Brazilian Court") pursuant to Federal Law 11,101 of February 9, 2005 (as amended from time to time, the "Brazilian Bankruptcy Law") of the laws of the Federative Republic of Brazil ("Brazil") filed on December 12, 2022 (the "EJ Petition Date"), by and through the undersigned counsel, respectfully submits this motion (this "Motion") and represents as follows:

RELIEF REQUESTED

1. Pursuant to this Motion, the Foreign Representative respectfully requests, pursuant to sections 105(a), 1504, 1507, 1510, 1515, 1517, 1520, 1521, and 1522 of title 11 of the United States Code (the "Bankruptcy Code"), entry of an order substantially in the form attached hereto as Exhibit A (the "Proposed Order" and, when as entered, the "Order"):

(a) granting recognition of the Brazilian EJ Proceeding as a "foreign main proceeding" (as defined in section 1502(4) of the Bankruptcy Code) of the Debtors, pursuant to section 1517 of the Bankruptcy Code, all relief included therewith as provided in section 1520 of the Bankruptcy Code, and related relief under section 1521(a);[3]

[2] Capitalized terms used but not defined herein shall have the meanings given to such terms in the Foreign Representative Declaration (as defined below) filed contemporaneously herewith.

[3] Alternatively, should the Court decline to recognize the Brazilian EJ Proceeding as the foreign main proceeding for any of the Debtors, the Foreign Representative respectfully requests that the Court recognize such proceeding as a "foreign nonmain proceeding" (as defined in section 1502(5) of the Bankruptcy Code), and grant appropriate relief to the same extent such relief would be granted pursuant to section 1520(a) of the Bankruptcy Code had the proceeding been recognized as a foreign main proceeding.

(b) finding that the Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and that the Foreign Representative is authorized to act on behalf of the Debtors for purposes of the Chapter 15 Cases;

(c) entrusting the Foreign Representative with the power to administer, realize, and distribute all assets of the Debtors within the territorial jurisdiction of the United States;

(d) recognizing and enforcing the EJ Plan (as defined below) in the United States and giving full force and effect, and granting comity in the United States, to the Brazilian Confirmation Order (as defined below), including, without limitation, giving effect to the Releases (as defined below) set forth in the EJ Plan and to allow the Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents to take actions necessary to consummate the EJ Plan and transactions contemplated thereby;

(e) permanently enjoining all entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents from (i) commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Brazilian EJ Proceeding, EJ Plan, or Brazilian Confirmation Order, including, without limitation, to obtain possession of, exercise control over, or assert claims

against the Debtors or their property or (ii) taking any action against the Debtors or their respective property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled, or released under the EJ Plan (including as a result of the laws of Brazil or other applicable jurisdiction, as contemplated under the EJ Plan) or the Brazilian Confirmation Order;

(f) authorizing and directing the Directed Parties[4] and any successor trustees to take any and all actions necessary to give effect to the terms of the EJ Plan and transactions contemplated thereby;

(g) exculpating and releasing the Directed Parties from any liability for any action or inaction taken in furtherance of, and/or in accordance with the Proposed Order or the EJ Plan, except for any liability arising from any action or inaction constituting gross negligence, actual fraud, or willful misconduct as determined by the Court (as defined below);

(h) waiving the 14-day stay on effectiveness of the Order; and

(i) granting such other and further relief as the Court deems just and proper.

The relief requested in this Motion is without prejudice to any additional relief the Foreign Representative may request.[5]

[4] "Directed Parties" means The Depository Trust Company ("DTC") (*i.e.*, the record holder of the global notes representing all of the Tranche 2 Notes), the collateral agents under the Indentures, the Trustees, the Trustees' agents, attorneys, successors and assigns, and the Offshore Account Banks (as defined below).

2. In support of this Motion, the Foreign Representative refers the Court to the statements contained in: (a) the *Declaration of Rogerio Luis Murat Ibrahim in Support of the Motion for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Brazilian Confirmation Order and Related EJ Plan, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code and Additional First Day Filings* (the "Foreign Representative Declaration"); (b) the *Declaration of Eduardo Secchi Munhoz in Support of the Motion for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Brazilian Confirmation Order and Related EJ Plan, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code and Additional First Day Filings* (the "Foreign Law Declaration"); and (c) the *Lists Pursuant to Federal Rules of Bankruptcy Procedure 1007(a)(4) and 7007.1 and Local Rule 1007-3* (the "Bankruptcy Disclosures" and, together with the Foreign Representative Declaration, and the Foreign Law Declaration, the "Supporting Documents"), which have been filed contemporaneously herewith and are incorporated herein by reference.

PRELIMINARY STATEMENT[6]

3. The Debtors are direct or indirect subsidiaries of Ocyan S.A. (f/k/a Odebrecht Óleo e Gás S.A.) (together with its direct and indirect subsidiaries, including the Debtors, the "Ocyan Group"), which form part of the Ocyan Group's drilling business (the "Drilling Business"). The Drilling Business provides charter and operation services to its clients that operate in the exploration, development, and production of offshore oil and gas fields in Brazil.

[5] The Foreign Representative is not seeking provisional relief at this time because he is not aware of any imminent threat to the Debtors' assets located within the territorial jurisdiction of the United States or to the Brazilian EJ Proceeding by virtue of actions in the United States. If circumstances change or the Foreign Representative becomes aware of additional facts, the Foreign Representative reserves all rights to seek provisional relief pursuant to section 1519 of the Bankruptcy Code to protect the Debtors and their assets.

[6] For the avoidance of doubt, capitalized terms used but not defined in this preliminary statement shall have the meanings ascribed to such terms in the Motion.

4. This Motion represents the culmination of lengthy and extensive creditor negotiations and a *recuperação extrajudicial* proceeding in Brazil that has resulted in a duly approved Brazilian restructuring plan supported by the majority of the affected claims—the EJ Plan. As described in greater detail below, the Debtors provided all relevant parties with robust notice of the commencement of the Brazilian EJ Proceeding, the EJ Plan, and the deadline for objecting to the EJ Plan—February 8, 2023. No objections were filed, and on March 20, 2023, the Brazilian Court entered an order confirming the as-filed version of the EJ Plan.

5. The purpose of the EJ Plan is to restructure the Drilling Business through the compromise of the Overseas Debtors' senior secured notes (the "Tranche 2 Notes," as further defined and discussed below) and the Debtors' intercompany debts and transfer of the Drilling Business to a new Luxembourg-incorporated entity, DrillCo. To fund the go-forward operations of the restructured Drilling Business, the EJ Plan provides for approximately $197 million of new money (the "New Money Investment"), participation in which was open to all holders of the Tranche 2 Notes and is backstopped by an ad hoc group of Noteholders (the "Ad Hoc Group") holding a majority of the aggregate principal amount outstanding under the Tranche 2 Notes.

6. An order from this Court recognizing the Brazilian EJ Proceeding and enforcing the EJ Plan and the Brazilian Confirmation Order within the territorial jurisdiction of the United States is a condition precedent to the effectiveness of the EJ Plan. Entry of the Proposed Order is required to ensure that the transactions contemplated under the EJ Plan, including the mission-critical restructuring of the Tranche 2 Notes and the funding of the New Money Investment, are properly effectuated and fully binding in the United States. As noted below, the Debtors are pleased to report that the Drilling Business recently won three (3) new drilling contracts (the "New Drilling Contracts"). In order to mitigate the Debtors' ongoing liquidity concerns, right-

size their balance sheet, and enable performance under the New Drilling Contracts, it is important that DrillCo receive the proceeds of the New Money Investment as soon as possible and by mid-May, 2023. This would provide DrillCo with the funding necessary to maintain and modify the Drilling Units as needed to fulfill DrillCo's obligations under the New Drilling Contracts. In addition, to comply with the existing Drilling Unit Contracts and continue operations, three of the Drilling Units are scheduled for mandatory upgrades this year, and the reorganized Drilling Business will incur capital expenditures in connection with these upgrades beginning in mid-May.

7. Accordingly, the Foreign Representative respectfully requests that the Court consider the relief requested by this Motion as soon as possible, but on regular 21-days' notice, to enable the Debtors to consummate the restructuring contemplated in the EJ Plan by mid-May, 2023.

JURISDICTION

8. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* M-431 dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this Court pursuant to 28 U.S.C. § 1410 because the Debtors' principal assets in the United States—a retainer deposited with counsel to the Foreign Representative that is being held in a Manhattan bank account for the benefit of the Debtors (the "U.S. Bank Account")—are in this District.

9. The Foreign Representative has properly commenced the Chapter 15 Cases under sections 1504 and 1509 of the Bankruptcy Code by filing the Chapter 15 Petitions (as defined

below) seeking recognition of the Brazilian EJ Proceeding under section 1515 of the Bankruptcy Code.

BACKGROUND

The following is an overview of the Debtors and the Ocyan Group, the indebtedness to be compromised under the EJ Plan, the events leading up to the Brazilian EJ Proceeding, the origins and development of the EJ Plan, the filing of the Brazilian EJ Proceeding, and the entry of the Brazilian Confirmation Order. The Foreign Representative respectfully refers the Court to the Foreign Representative Declaration and the Foreign Law Declaration for additional information.

A. General Background

1. Overview of the Debtors' Business

10. The Ocyan Group and its ultimate parent Ocyan S.A. (f/k/a Odebrecht Óleo e Gás S.A.) are privately-held companies that are 100% owned by the Novonor group (f/k/a the Odebrecht Group). Foreign Rep. Decl. ¶ 7. The Ocyan Group was originally created to house the Novonor group's oil and gas services activities and has over 45 years of operational experience. *Id.* In addition to its Drilling Business, the Ocyan Group provides integrated service solutions to the oil and gas industry, including the charter and operation of offshore production units (mainly floating production storage and offloading ("FPSO") units),[7] subsea services, and maintenance activities for the same. *Id.* Petróleo Brasileiro S.A. ("Petrobras"), Brazil's state-owned oil and gas company, is the main client and business partner of the Drilling Business, and

[7] FPSOs are vessels used by the offshore oil and gas industry for the production and processing of hydrocarbons, and for the storage of oil. An FPSO vessel is designed to receive hydrocarbons produced by itself or from nearby platforms, process them and store oil until it can be offloaded onto a tanker or transported through pipeline.

of the Ocyan Group generally. *Id.* As further detailed below, the EJ Plan restructures only the Ocyan Group's Drilling Business and not other businesses of the Ocyan Group. *Id.*

11. Debtors Norbe Six, Norbe Eight, Norbe Nine, and ODN I (collectively, the "Charter Entity Debtors") charter the Ocyan Group's drilling rigs and drillships (collectively, the "Drilling Units"),[8] which operate exclusively in Brazil for primarily Brazilian customers: Petrobras, the Libra Consortium, PRIO, and the Consortium BM-BAR-5.[9] *Id.* at ¶ 8. The Drilling Units are currently chartered by these customers under a total of eight (8) charter contracts (the "Drilling Unit Contracts"), each governed by Brazilian law.[10] *Id.* As further detailed below, the other Debtors—Norbe VIII/IX, OODFL, Tay IV, and ODN I Perfurações—have no operational activities and instead facilitate the financing of the Ocyan Group's Drilling Business or other tax and corporate organizational purposes. *Id.*

12. ODN I Perfurações is organized under the laws of Brazil. *Id.* at ¶ 9. The Charter Entity Debtors and Tay IV (collectively, the "Austrian Debtors") are organized under the laws of Austria. *Id.* OODFL and Norbe VIII/IX (together, the "Cayman Debtors" and, together with the Austrian Debtors, the "Overseas Debtors") are organized under the laws of the Cayman Islands. *Id.* All of the Overseas Debtors (*i.e.*, all of the Debtors except ODN I Perfurações) are issuers or

[8] As of the date of this Motion, the Drilling Units consist of five (5) ultra-deepwater drilling rigs and drillships: *Norbe VI Drilling Rig*, *Norbe VIII Drilling Rig*, *Norbe IX Drillship*, *ODN I Drillship*, and *ODN II Drillship*. Foreign Rep. Decl. ¶ 8, n.4. A drillship is a vessel used in exploratory offshore drilling of new oil and gas wells, and a drilling rig is a large structure with facilities to extract and process oil and gas that lie beneath the seabed. *Id.*

[9] (a) The "Libra Consortium" refers to the consortium consisting of Petrobras, as its leader, and Shell plc, Total Energies SE, China National Petroleum Corporation, and China National Offshore Oil Corporation; (b) "PRIO" means Petro Rio S.A. and its subsidiaries and affiliates, which is one of Brazil's largest independent oil and natural gas producers; and (c) the "Consortium BM-BAR-5" refers to the consortium consisting of Petrobras and BP Energy. *Id.* at n.5.

[10] The Drilling Unit Contracts are set to expire between May 2023 and March 2027, subject to certain contractual options to extend. *Id.* at n. 6.

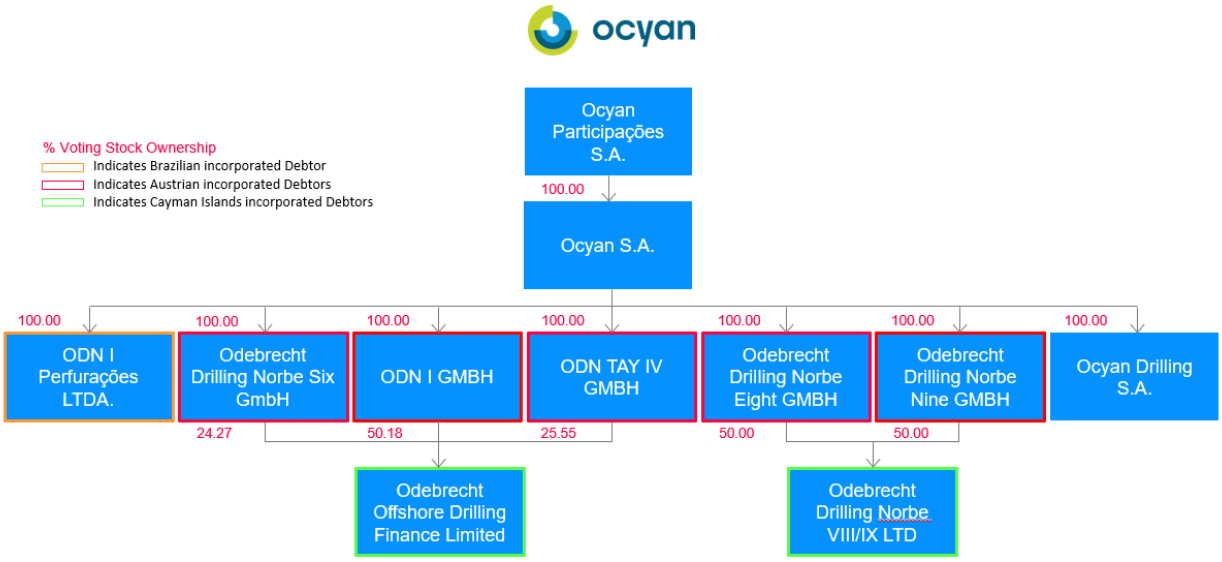
guarantors under the Tranche 2 Notes subject to the restructuring contemplated in the EJ Plan (the "Restructuring"). *Id.* A simplified corporate structure is provided below in Section A.2.

13. The Debtors are a part of the Ocyan Group, and as such are operationally and functionally controlled from and centered in Brazil. *Id.* at ¶ 10. As described in further detail below in paragraphs 94–96, each of the Debtors performs specific functions for the Ocyan Group's Drilling Business, but all Debtors are controlled by non-Debtors Ocyan S.A. or Ocyan Drilling S.A. ("Ocyan Drilling" and, together with Ocyan S.A., the "Parent Operating Entities"), both of which are incorporated in and operate from Brazil. *Id.* In short, the Debtors own the Drilling Units and Drilling Unit Contracts, but the non-Debtor Parent Operating Entities actually control and operate the Debtors' business, pursuant to a variety of operating and service agreements with the Debtors. *Id.*

14. Key strategic and operating decisions for the Debtors are made by the Chief Executive Officer, Chief Financial Officer (who is the Foreign Representative), senior management and the board of directors of Ocyan S.A., who are based in, and work from, offices in the state of Rio de Janeiro, Brazil (the "Rio Offices"). *Id.* at ¶ 11. While the Overseas Debtors maintain a presence in their respective jurisdictions of incorporation, given that the Overseas Debtors form part of the greater Ocyan Group (which provides the Debtors with charter and related operational services), the key corporate functions of all Debtors are provided from the Rio Offices through Ocyan S.A. and Ocyan Drilling. *Id.* These functions include corporate accounting, accounts payable, accounts receivable, financial planning, internal auditing, marketing, treasury, real estate, research and development, tax services, finance, legal, human resources, payroll, billing, freight management, procurement, cash management functions, and engineering services. *Id.*

2. Corporate Structure of the Ocyan Group's Drilling Business

15. The Ocyan Group's corporate structure reflects its history of financings, expansions, strategic investments, restructurings and acquisitions, as well as its corporate strategy of allocating specific operations to different corporate entities. *Id.* at ¶ 12. The chart below shows a simplified corporate structure of the Ocyan Group's Drilling Business:[11]



B. The Debtors' Capital Structure

16. As of the EJ Petition Date, with the exception of the Intercompany Debt, the Overseas Debtors' outstanding funded indebtedness, all of which is issued by the Cayman Debtors and guaranteed by the Austrian Debtors, consisted of approximately:

a. $761 million in aggregate principal amount of Tranche 2 7.35% Senior Secured Notes due 2026 (the "2021 Tranche 2 Notes") issued pursuant to that certain indenture dated as of December 22, 2017, by and among Debtor Norbe VIII/IX, as issuer, Debtors Norbe Eight and Norbe Nine, as guarantors (the "2021 Project

[11] Additional information regarding ownership of stock in the Debtors is set forth in the Bankruptcy Disclosures filed contemporaneously herewith.

Notes Guarantors"), the Bank of New York Mellon, as trustee, registrar, transfer agent and paying agent, and Lord Securities Corporation, as collateral agent (the "2021 Notes Collateral Agent") (the "2021 Indenture"); and

b. $1,969 million in aggregate principal amount of Tranche 2 7.72% Senior Secured Notes due 2026 (the "2022 Tranche 2 Notes" and, together with the 2021 Tranche 2 Notes, the "Notes" or the "Tranche 2 Notes" and the holders thereof, the "Noteholders") issued pursuant to that certain indenture dated as of December 22, 2017, by and among Debtor OODFL, as issuer (together with Debtor Norbe VIII/IX, the "Issuers"), Debtors ODN I, Norbe Six, and Tay IV, as guarantors (collectively, the "2022 Project Notes Guarantors" and, together with the 2021 Project Notes Guarantors, the "Guarantors"), HSBC Bank USA, N.A., as trustee, registrar, transfer agent, paying agent and collateral agent[12] (the "2022 Indenture" and, together with the 2021 Indenture, the "Indentures"). *Id.* at ¶ 16.

The Tranche 2 Notes are secured by, among other things, a first priority lien on substantially all of the material assets of the Overseas Debtors, including mortgages over all of the Drilling Units, related charters and service contracts and equity interests of the Overseas Debtors, subject to customary exceptions and applicable law (collectively the "Existing Collateral"). *Id.* As of March 31, 2023, the aggregate amount of principal and interest outstanding under the Indentures was approximately $2.85 billion. *Id.*

17. Other funded indebtedness previously outstanding under the Indentures in the aggregate principal amount of approximately $1 billion was paid in full in the ordinary course,

[12] In its capacity as the collateral agent under the 2021 Indenture, HSBC Bank USA, N.A. is referred to herein as the "2022 Notes Collateral Agent," and, together with the 2021 Notes Collateral Agent, the "Collateral Agents."

prior to the EJ Petition Date.[13] *Id.* at ¶ 17. The Project Notes (as defined below), of which the Tranche 2 Notes are a part, were issued pursuant to the Overseas Debtors' 2017 EJ Plan, as defined and discussed below. *Id.*

C. The Overseas Debtors' Previous Restructuring

18. On May 23, 2017, the Overseas Debtors, along with certain affiliates that are not presently Debtors under the EJ Plan (together with the Debtors, the "2017 Debtors")[14] jointly filed petitions for commencement of a recuperação extrajudicial proceeding (the "2017 EJ") with the Brazilian Court. *Id.* at ¶ 19. Further details regarding the 2017 EJ are set forth in paragraphs 50–52 of the Foreign Law Declaration.

19. On November 3, 2017, Rogerio Luis Murat Ibrahim, as the duly authorized foreign representative of the 2017 Debtors (the "2017 Foreign Representative"), filed chapter 15 petitions for each of the 2017 Debtors along with supporting pleadings with the Court.[15] *See In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Nov. 3, 2017) [ECF No. 4]. These filings were not opposed, and the Court entered an order (the "2017 Chapter 15 Order") recognizing and enforcing the 2017 EJ Plan in the territorial jurisdiction of the United States on

[13] Specifically, pursuant to the 2021 Indenture, Debtor Norbe VIII/IX issued Tranche 1 Notes in the aggregate principal amount of $500 million (the "2021 Tranche 1 Notes" and, together with the 2021 Tranche 2 Notes, the "2021 Project Notes"), which matured and were repaid in full on September 1, 2021. Similarly, pursuant to the 2022 Indenture, Debtor OODFL issued Tranche 1 Notes in the aggregate principal amount of $506 million (the "2022 Tranche 1 Notes" and, together with the 2022 Tranche 2 Notes, the "2022 Project Notes" and, together with the 2021 Project Notes, the "Project Notes"), which matured and were repaid in full on December 1, 2022.

[14] The 2017 Debtors consisted of: Odebrecht Óleo e Gás S.A. (n/k/a Ocyan, S.A.), Odebrecht Oil & Gas GmbH (n/k/a Ocyan Oil & Gas GmbH), Odebrecht Oil Services Ltd. (n/k/a Ocyan Oil Services Ltd.), Odebrecht Oil & Gas Finance Limited, Odebrecht Drilling Norbe VIII/IX Ltd., Odebrecht Drilling Norbe Eight GmbH, Odebrecht Drilling Norbe Nine GmbH, Odebrecht Offshore Drilling Finance Ltd., ODN I GmbH, Odebrecht Drilling Norbe Six GmbH, and ODN Tay IV GmbH. The 2017 Debtors consisted of the issuers, guarantors and other credit support providers for the notes, and other instruments restructured pursuant to the 2017 EJ Plan (as defined below). With the exception of ODN I Perfurações, each of the Debtors in the Brazilian Proceeding and these Chapter 15 Cases was also a 2017 Debtor.

[15] The jointly administered docket can be found at *In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. 2017).

December 13, 2017. *See In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28]. In the 2017 Chapter 15 Order, the Court found, among other things, that (a) the 2017 EJ was "a 'foreign proceeding' within the meaning of section 101(23) of the Bankruptcy Code," (b) "Brazil is the center of main interests of the [2017] Debtors, and, accordingly, the Foreign Proceeding is a 'foreign main proceeding' within the meaning of section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code," and (c) [the 2017 Foreign Representative] "the duly appointed 'foreign representative' of each of the [2017] Debtors within the meaning of section 101(24) of the Bankruptcy Code." For ease of reference, the 2017 Chapter 15 Order is attached to the Foreign Representative Declaration as Exhibit A.

20. Shortly after entry of the 2017 Chapter 15 Order, the 2017 EJ Plan went effective under Brazilian Bankruptcy Law on December 21, 2017. *See In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 30]. Pursuant to the 2017 EJ Plan, holders of the 2017 Notes[16] exchanged such notes for the Project Notes.

D. Events Precipitating Commencement of the Brazilian EJ Proceeding

21. The Issuers have made significant progress in repaying the Project Notes since consummation of the 2017 EJ Plan, including paying the 2021 Tranche 1 Notes and the 2022 Tranche 1 Notes in full. Foreign Rep. Decl. at ¶ 22. In addition, the Issuers have paid cash interest on the Project Notes in an aggregate amount of approximately $347.5 million. *Id.* A

[16] As further detailed in the *Declaration of Rogerio Luis Murat Ibrahim*, the "2017 Notes" means those certain previously outstanding (a) 6.35% Senior Secured Notes due 2021 issued by Norbe VIII/IX and guaranteed by Norbe Eight and Norbe Nine; (b) 6.75% Senior Secured Notes due 2022 issued by OODFL and guaranteed by ODN I and Norbe Six; and (c) 6.625% Senior Secured Notes due 2022 issued by OODFL and guaranteed by ODN I, Norbe Six, and Tay IV. *See Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Nov. 3, 2017) [ECF No. 5]. While other financial instruments were restructured pursuant to the 2017 EJ Plan, the Project Notes were not consideration for those instruments. *Id.*

combination of macroeconomic and industry-specific factors, however, have necessitated the relief provided under the EJ Plan. *Id.*

22. At the outset of the pandemic, the Debtors grappled with cratering oil-and-gas prices. *Id.* at ¶ 23. The eventual, albeit slow, rebound in oil and gas prices was helpful, but the Debtors' ability to benefit from it was limited by its existing contract terms and (as detailed below) the substantial investment that winning new contracts requires. *Id.* In addition, prices have spiked for a wide array of goods used in, and services necessary for, the Drilling Business, such as logistics, labor, third-party contractors, enhanced healthcare, and other goods and services. *Id.*

23. In the offshore oil and gas markets in which the Debtors operate, drilling rigs and drillships are also in oversupply. *Id.* at ¶ 24. Many competing drilling rigs and drillships have been able to undercut Ocyan S.A.'s pricing in winning new drilling contracts for the Debtors because these drilling rigs and drillships are owned and operated by competitors with already-optimized capital structures. *Id.* Therefore, somewhat ironically, the Debtors' overleveraged balance sheet has been, in part, to blame for their inability to de-lever by winning a sufficient number of new contracts. *Id.*

24. Relatedly, in order to win the drilling contracts that Ocyan S.A. has successfully obtained for the Debtors, it was necessary for the Debtors to invest increasing amounts of capital ("CapEx") in their assets. *Id.* at ¶ 25. Similarly, in their drive to maintain operational excellence and expand the array of services offered to their customers, the Debtors' operational expenses ("OpEx") have also increased. *Id.* These elevated CapEx and OpEx requirements, which were exacerbated by recent inflationary pressures and oil price fluctuations, combined with lower daily market charter rates and the lack of charter performance bonuses, have further limited the

Debtors' ability to allocate capital to repay debt. *Id.* Notwithstanding, the Debtors are pleased to report that the Ocyan Group's Drilling Business has recently won three (3) New Drilling Contracts; however, commencement of the New Drilling Contracts is contingent upon consummation of the Restructuring, which will provide the funds necessary to maintain and modify the Drilling Units to fulfill the Ocyan Group's obligations under the New Drilling Contracts. *Id.*

25. In response to these headwinds, since the first quarter of 2021, the Debtors, with the assistance of their advisors, Davis Polk & Wardwell LLP ("Davis Polk"), as counsel under New York law, E. Munhoz Advogados ("E. Munhoz" or "Brazilian Counsel"), as counsel under the laws of Brazil, and Lazard Assessoria Financeira Ltda., as financial advisor, have taken steps to negotiate a restructuring of their liabilities with the Ad Hoc Group. *Id.* at ¶ 26. Those negotiations ultimately led to the broadly supported Restructuring, as further described below. *Id.*

E. The Brazilian EJ Proceeding and Brazilian Reorganization Plan

1. Overview of Restructuring and Brazilian EJ Proceeding

26. The commencement of the Brazilian EJ Proceeding was duly authorized in accordance with the Debtors' constitutional documents and applicable corporate laws[17] and on the EJ Petition Date of December 12, 2022, the Debtors submitted their extrajudicial restructuring plan (as supplemented, amended, or otherwise modified and including the exhibits attached thereto, the "EJ Plan") to the Brazilian Court, copies of which (in both Portuguese and English) are attached as Exhibit B to the Foreign Representative Declaration. *Id.* at ¶ 27. The EJ

[17] The Foreign Representative is so informed by counsel in the jurisdiction of organization of each of the Debtors. E. Munhoz, Maples and Calder (Cayman) LLP and DORDA Rechtsanwälte GmbH (collectively, "Non-U.S. Counsel") serve as counsel to the Foreign Representative in Brazil, the Cayman Islands, and Austria, respectively.

Plan was filed with the support of holders of approximately 71% of the 2021 Tranche 2 Notes and approximately 57% of the 2022 Tranche 2 Notes. *Id.*

27. On the EJ Petition Date, the Debtors issued a press release announcing the commencement of the Brazilian EJ Proceeding (the "EJ Press Release"), a copy of which was posted on the company's website later that same day at https://www.ocyan-sa.com/en/press/notice-to-market (the "Company Website") and on the Debtors' case website at https://dm.epiq11.com/case/ocyan/info (the "Case Website"), to provide further public notice of the filing. *Id.* at ¶ 28. A copy of the EJ Press Release is attached to the Foreign Representative Declaration as Exhibit C.

28. On December 15, 2022, the Brazilian Court entered an interlocutory order that, among other things, confirmed acceptance of the filing of the Brazilian EJ Proceeding, ratified the preliminary automatic one-hundred eighty (180)-day stay of all actions and enforcement proceedings commenced against the Debtors by creditors subject to the Brazilian EJ Proceeding (including holders of the Tranche 2 Notes) and ordered the publication of a public notice informing affected creditors of the filing of the Brazilian EJ Proceeding (the "Initial Court Order"). Foreign Law Decl. ¶ 54. A copy of the Initial Court Order and a certified English translation thereof are attached to the Foreign Representative Declaration as Exhibit D.

29. On January 9, 2023, the Brazilian Court published the public notice (*edital*) (the "Public Notice") of the Brazilian EJ Proceeding to affected creditors in the Brazilian Court's official judicial gazette. *Id.* at ¶ 56. A copy of the Public Notice and a certified English translation thereof are attached to the Foreign Representative Declaration as Exhibit E. The publication of the Public Notice began the EJ Plan's thirty (30)-day objection period, setting the objection deadline for February 8, 2023 (the "Objection Deadline"). *Id.*

30. On January 11, 2023, the Debtors sent a notice of the filing of the Brazilian EJ proceeding and terms of the EJ Plan, as required pursuant to Brazilian Bankruptcy Law (the "Brazilian Law Notice"), to (a) the Intercompany Creditors (as defined below), (b) The Bank of New York Mellon, as trustee under the 2021 Indenture (in such capacity, the "2021 Notes Trustee"), and (c) HSBC Bank USA, N.A., as trustee under the 2022 Indenture (the "2022 Notes Trustee" and, together with the 2021 Notes Trustee, the "Trustees") for distribution to the Noteholders. *Id.* A copy of the Brazilian Law Notice is attached to the Foreign Representative Declaration as Exhibit F.[18]

31. As stated in the Foreign Law Declaration filed contemporaneously herewith, the Objection Deadline passed on February 8, 2023, with no objections to the EJ Plan filed. Foreign Law Decl. ¶ 58. In light of the absence of objections and broad support for the EJ Plan, the Brazilian Court entered an order (the "Brazilian Confirmation Order") confirming the EJ Plan on March 20, 2023. *Id.* The Brazilian Confirmation Order and a certified English translation thereof are attached to the Foreign Representative Declaration as Exhibit G. As further detailed in the Foreign Law Declaration, the deadline to appeal the Brazilian Confirmation Order or seek a stay of its effects expires fifteen (15) business days after notice of the entry of the Brazilian Confirmation Order is published in the Brazilian Court's judicial gazette, which occurred on March 29, 2023. *Id.* at ¶ 59. Accordingly, the deadline to appeal the Brazilian Confirmation Order is April 24, 2023. *Id.* As of the date hereof, no motion has been filed seeking to appeal the Brazilian Confirmation Order or stay its effects. *Id.* The Foreign Representative is informed

[18] In accordance with Section 11.1.11 of the EJ Plan, on or before the effective date of the Restructuring (the "Closing Date"), the Debtors, the Trustees, and the other Existing Agents (as defined below) will enter into an indemnification agreement (the "Existing Agents Supplemental Indemnification") providing for the survival of the Existing Agents' claims for indemnification and payment of fees and expenses in connection with the Indentures, in each case, subject to and in accordance with the terms thereof.

by E. Munhoz that, given the broad support for the EJ Plan and absence of objections, it is unlikely that a party-in-interest would seek to appeal the Brazilian Confirmation Order or stay its effects. *Id.* In the unlikely event that such a motion is filed, Brazilian Counsel will promptly file a supplemental declaration informing this Court.

32. On April 5, 2023, the boards of directors of each of the Overseas Debtors, and the shareholders of ODN I Perfurações, duly adopted resolutions appointing Rogerio Luis Murat Ibrahim to act as foreign representative in these Chapter 15 Cases (collectively, the "Chapter 15 Authorizing Resolutions") and each of the Debtors granted me power of attorney to commence and prosecute these Chapter 15 Cases. Foreign Rep. Decl. at ¶ 33. Each appointment complied with the constitutional documents and applicable corporate laws of the applicable Debtor. *Id.* Copies of the Chapter 15 Authorizing Resolutions, as well as the powers of attorney granted to me by the Debtors, are attached to the Foreign Representative Declaration as Exhibit H.

2. The Terms of the Restructuring

33. The Restructuring is effectuated through the transfer of the Drilling Business to a new holding company ("DrillCo") domiciled in the Grand Duchy of Luxembourg ("Luxembourg") that will hold the Drilling Business going forward. On the Closing Date, DrillCo will issue new securities to Tranche 2 Noteholders, in exchange for their Tranche 2 Notes, as well as in exchange for the New Money Investment to fund the company going forward. *Id.* at ¶ 34. Participation in the New Money Investment was open to all Noteholders on a ratable basis. *Id.* The key terms of the Restructuring are described in further detail in the following paragraphs, and a simplified post-Restructuring corporate structure with pro-forma equity holdings is attached as Exhibit I to the Foreign Representative Declaration.

i. Transfer of Drilling Business to DrillCo

34. As further detailed in that certain Drilling Business Transfer Agreement attached as Schedule 5.1 to the EJ Plan (the "DBTA"), pursuant to the EJ Plan, the Ocyan Group (including the Debtors and certain non-Debtor members of the Ocyan Group) will (with certain exceptions) transfer all of their respective drilling assets, people, infrastructure, and contracts used in the Drilling Business and associated obligations and liabilities to DrillCo.[19] *Id.* at ¶ 35. This will occur principally through (a) the contribution of certain drilling assets currently held by Ocyan S.A. to Ocyan Drilling, (b) the contribution of Ocyan Drilling to AIAS (as defined below), the current direct or indirect parent of the Debtors, and (c) the contribution of AIAS to DrillCo. *Id.*

ii. Tranche 2 Notes Exchange and DrillCo Capital Structure

35. Upon consummation of the EJ Plan, DrillCo will issue the Plan Consideration (as defined below) elected by each Noteholder to that Noteholder in exchange for its Tranche 2 Notes, and accordingly will subrogate into and become the owner of the Tranche 2 Notes pursuant to applicable law, at which time the Tranche 2 Notes will become an intercompany claim held by DrillCo against the Debtors (the "Tranche 2 Intercompany Claim"). *Id.* at ¶ 36. DrillCo will be empowered to transfer the Tranche 2 Intercompany Claim to its wholly-owned subsidiary AIAS, which will be a guarantor of the New Notes (as defined below) and empowered, in turn, to transfer, liquidate, restructure, or perform any other transaction with such Tranche 2 Intercompany Claim in its discretion, in each case, as the Debtors find most effective and efficient under applicable law, including tax and regulatory requirements, as provided in Section

[19] For the avoidance of doubt, upon the Closing Date and as contemplated in Section 2.6(iii) of the DBTA, other than CAPEX and OPEX (each as defined in the DBTA), intercompany obligations between Ocyan S.A. and its current subsidiaries will be retained by Ocyan S.A.

5.4 of the EJ Plan. *Id.* No obligations to third parties under the Tranche 2 Notes or the Indentures will survive consummation of the EJ Plan, other than the claims of the Existing Agents for indemnification and payment of fees and expenses, in each case, as set forth in, and subject to, the terms of the Existing Agents Supplemental Indemnification. *Id.* The Existing Collateral will be released, and substantially all of the Existing Collateral (and the further collateral as described in paragraph 37 below) will secure the New Notes. *Id.* The Tranche 2 Intercompany Claim will be unsecured. *Id.*

36. The equity in DrillCo ("DrillCo Equity") will consist of three classes: (a) "Class A Shares," which will be distributed to Ocyan Oil & Gas GmbH ("Ocyan GmbH"), an Ocyan S.A. subsidiary, (b) "Class B Voting Shares," which will be distributed to Noteholders and, subject to certain conditions, to existing management of Ocyan S.A. (pursuant to DrillCo's management incentive plan), and (c) "Class C Nonvoting Shares," which will be distributed to Noteholders, Ocyan GmbH, and existing management of Ocyan S.A. (pursuant to DrillCo's management incentive plan). *Id.* at ¶ 37. The Class A Shares and Class B Voting Shares will constitute 6.5% and 93.5% of the voting rights in DrillCo, respectively. *Id.* The Class C Nonvoting Shares will be the only nonvoting equity securities issued by DrillCo pursuant to the EJ Plan. *Id.* The Class A Shares and the Class B Voting Shares will, together, constitute 10% of DrillCo's total equity capital, whereas, the Class C Nonvoting Shares will constitute the remaining 90%. *Id.*

37. At consummation of the EJ Plan, DrillCo will also issue approximately $300 million of new secured notes (the "New Notes"). *Id.* at ¶ 38. The New Notes will mature seven years after their issue date and will bear interest at 7.5% per annum, payable quarterly in cash. *Id.* With the exception of ODN I Perfurações, each of the Debtors and certain other non-Debtor

Ocyan S.A. subsidiaries will guarantee the New Notes (collectively, the "New Notes Guarantors").[20] *Id.* The New Notes will be secured by, among other things, a first priority lien on substantially all of the material assets of DrillCo, the New Notes Guarantors, and certain of their subsidiaries (collectively, the "Collateral"). *Id.* The Collateral includes mortgages over all of the drilling rigs and drillships, related charters and service contracts, and equity interests of DrillCo, the New Notes Guarantors, and Ocyan Drilling, subject to customary exceptions, applicable law, and the New Notes Term Sheet attached to the EJ Plan as Schedule 4.2 (the "New Notes Term Sheet"). *Id.* The New Notes are expected to be listed on an international securities exchange within six (6) months of their issue date. *Id.* The terms and conditions of the New Notes shall be set forth in an indenture (the "New Notes Indenture") governed by New York law, which shall reflect, in all material respects, the terms and conditions of the New Notes Term Sheet. *Id.*

38. As described below, Noteholders were also able to elect (the "ConvertCo Election") to receive unsecured convertible notes (the "ConvertCo Notes") issued by a new Luxembourg-domiciled company ("ConvertCo") in lieu of Class C Nonvoting Shares. *Id.* at ¶ 39. The ConvertCo Notes shall be exchangeable for a certain amount of Class C Nonvoting Shares at the holder's election or automatically upon the occurrence of certain mandatory exchange events. *Id.* The ConvertCo Notes will mature twenty (20) years after their issue date and will bear interest at 0.5% per annum, payable semiannually in cash or in kind. *Id.* The terms and conditions of the ConvertCo Notes shall be set forth in an indenture (the "ConvertCo

[20] The non-Debtor guarantors of the New Notes include (a) Austrian limited liability companies AIAS GmbH ("AIAS"), ODN Holding GmbH, and ODN Tay IV Holding GmbH, (b) Cayman Islands exempted company Ocyan Drilling Services Limited, and (c) United Kingdom private limited company Ocyan Drilling United Kingdom Limited.

Indenture") governed by New York law, which shall reflect, in all material respects, the terms and conditions of the Exchangeable Notes Term Sheet attached to the EJ Plan as Schedule 4.4. *Id.*

iii. New Money Investment

39. All Noteholders had the option to provide DrillCo with the New Money Investment in the aggregate amount of approximately $197 million in exchange for (a) New Notes and (b)(i) Class B Voting Shares and Class C Nonvoting Shares or (ii) Class B Voting Shares and ConvertCo Notes. *Id.* at ¶ 40. Noteholders were allowed to fund their New Money Investment by waiving their right to receive pro rata cash payments (the "Deferred Cash")[21] that would otherwise be payable to them as Plan Consideration. *Id.* Pursuant to that certain Backstop Commitment Agreement (as amended, restated, supplemented, or otherwise modified, the "BCA"), the members of the Ad Hoc Group committed to fund any portion of the New Money Investment not elected by other Noteholders (the "Backstop Investment"). *Id.*

[21] The Deferred Cash consists of two silos: (a) cash proceeds from those certain debt service reserve accounts (the "DSRAs") securing the Tranche 2 Notes (the "DSRA Deferred Cash"), which is paid as Plan Consideration irrespective of a Noteholder's Election; and (b) cash interest on the Tranche 2 Notes that accrued from (i) June 1, 2022 (the last date on which interest was paid in cash under the Tranche 2 Notes) to the calendar day immediately preceding the EJ Petition Date (the "Pre-Filing Interest Cash") and (ii) the EJ Petition Date until the closing of the Restructuring (the "Post-Filing Interest Cash"). Foreign Rep. Decl. ¶ 40, n.23. The Post-Filing Interest Cash is paid only to Noteholders that elect either Option A-1 or Option A-2 (as summarized below). *Id.* The amount of DSRA Deferred Cash and Pre-Filing Interest Cash available to fund the New Money Investment is approximately $197 million and $39 million, respectively. *Id.* The amount of Post-Filing Interest Cash available to fund the New Money Investment will depend on the Closing Date, but the EJ Plan provides that the Pre-Filing Interest Cash plus the Post-Filing Interest Cash is subject to an aggregate cap of $51 million. *Id.*

iv. Tranche 2 Notes Treatment Options

40. Under the EJ Plan, each Noteholder was able to elect to exchange its Tranche 2 Notes for one of five combinations ("Options")[22] of consideration (the "Plan Consideration"):

Election Option	Plan Consideration	New Money Investment Consideration
Option A-1	• (a) New Notes, • (b) DrillCo Equity in the form of Class B Voting Shares and Class C Nonvoting Shares and • (c) any Deferred Cash remaining after funding such Noteholder's New Money Investment	• (a) New Notes and • (b) DrillCo Equity in the form of Class B Voting Shares and Class C Nonvoting Shares
Option A-2	• (a) New Notes, • (b) Class B Voting Shares, • (c) ConvertCo Notes and • (d) any Deferred Cash remaining after funding such Noteholder's New Money Investment	• (a) New Notes, • (b) Class B Voting Shares, and • (c) ConvertCo Notes
Option B-1 (default Option)	• (a) DSRA Deferred Cash • (b) New Notes, and • (c) DrillCo Equity in the form of Class B Voting Shares and Class C Nonvoting Shares	N/A
Option B-2	• (a) Cash, • (b) New Notes, • (c) Class B Voting Shares, and • (d) ConvertCo Notes	N/A
Option C	• (a) DSRA Deferred Cash and • (b) New Notes	N/A

[22] The Foreign Representative is advised by E. Munhoz, counsel under Brazilian law, that providing creditors with optionality regarding their plan consideration is common in Brazilian *recuperação extrajudicial* plans. Here, the necessity for the various election options arose due to, among other things, the existence of Brazilian case law providing that *recuperação extrajudicial* plans must provide an alternative payment option for those creditors that do not want to hold equity. Foreign Law Decl. ¶ 56, n.16.

41. Option B-1 was deemed elected as the default by any Noteholder that failed to elect a different Option. Each Option is comprised of varying combinations of: (a) cash, (b) DrillCo Equity, (c) New Notes and (d) ConvertCo Notes. *Id.* at ¶ 41. Paragraphs 37–39 of the Foreign Representative Declaration provide further details regarding each category of Plan Consideration.

v. Election Process and Results

42. On January 9, 2023, the Debtors launched an election process (the "Election") through The Depository Trust Company's ("DTC") automated-tender option program ("ATOP"), giving Noteholders the opportunity to elect to fund the New Money Investment and elect the type of consideration they would like to receive under the EJ Plan. *Id.* at ¶ 42. Participation in each of the Election and the New Money Investment was open to all Noteholders on a ratable basis. *Id.* Annex A to the Election Notice (as defined below) summarized the five Options for packages of Plan Consideration available to each Noteholder, including the amount of New Notes, DrillCo Equity, and cash that would be available (on a pro rata basis) to such Noteholder depending on (a) the amount of such Noteholder's 2021 Tranche 2 Notes or 2022 Tranche 2 Notes and (b) such Noteholder's Election. *Id.*

43. On that same day, the Debtors issued a press release announcing the launch of the Election on the Company Website (the "Election Launch Press Release") and posted notice of the Election (the "Election Notice") and an Election form (the "Election Form") on the Case Website. *Id.* at ¶ 43. In addition, Epiq Corporate Restructuring, LLC, in its capacity as the Debtors' information agent (the "Information Agent") sent the Election Notice and Election Form to the Noteholders through the banks and brokerage firms holding Tranche 2 Notes through DTC or such firm's nominee representative, with sufficient copies and instructions to forward such documents to the Noteholders. *Id.* Copies of the Election Notice, the Election

Form, and the Election Launch Press Release are attached to the Foreign Representative Declaration as Exhibit J, Exhibit K, and Exhibit L, respectively. As stated in the Election Notice and Election Form, the deadline to make an Election expired on February 8, 2023 (the "Election Deadline"). *Id.* As of the Election Deadline, the results of the Election were as follows:[23]

	2021 Tranche 2 Notes		**2022 Tranche 2 Notes**	
Election Option	**Principal Tendered**	**Tendered Percentage of 2021 Tranche 2 Notes Outstanding**	**Principal Tendered**	**Tendered Percentage of 2022 Tranche 2 Notes Outstanding**
Option A-1 Election	$416,650,479	53.75%	$1,040,447,020	51.84%
Option A-2 Election	$312,974,344	40.38%	$794,330,625	39.57%
Option B-1 Election (DEFAULT)	$8,778,690	1.13%	$20,144,148	1.00%
Option B-2 Election	$3,280,019	0.42%	$5,560,879	0.28%
Option C Election	$6,823,975	0.88%	$33,212,940	1.65%
Totals	**$748,507,507**	**96.57%**	**$1,893,695,612**	**94.35%**

44. As depicted in the chart above, both the Election and the New Money Investment enjoyed a high level of Noteholder participation. *Id.* at ¶ 44. Because Noteholders representing less than 100% of the aggregate principal amount outstanding under the Tranche 2 Notes made the Option A-1 or Option A-2 election, the Backstop Parties will fund the Backstop Investment, pursuant and subject to the terms of the BCA. *Id.* As of March 31, 2023, the total amount of the

[23] As stated in the Election Notice and Election Form, the Noteholders have the right to withdraw their Tranche 2 Notes from the Election following the Election Deadline and up to 20 business days prior to the anticipated Closing Date (the "Withdrawal Deadline"), which is set to occur later this month. Foreign Rep. Decl. ¶ 43, n.25. Any Noteholder that withdraws Tranche 2 Notes shall, with respect to such Tranche 2 Notes, be deemed to have selected Option B-1 (the default Option). *Id.* Accordingly, until the Withdrawal Deadline occurs, the results of the Election are subject to change. *Id.* As of April 9, 2023, no Noteholder has withdrawn their Tranche 2 Notes, and the results of the Election remain the same as they were at the Election Deadline. *Id.*

Backstop Investment is approximately $14.5 million.[24] *Id.* As stated in the Election Notice and the Election Form, any Noteholder that failed to timely make an Election by the Election Deadline was deemed to have selected Option B-1. *Id.*

vi. Intercompany Debt Treatment

45. Certain intercompany claims (the "Intercompany Debt") between and among the Debtors arose prior to the EJ Petition Date pursuant to certain credit agreements (the "Intercompany Loan Agreements") executed in the ordinary course of business by and among certain of the Debtors as borrowers (the "Intercompany Debtors") and certain of the Debtors as lenders (in such capacities, the "Intercompany Creditors"). *Id.* At ¶ 45. After the Closing Date, the Debtors are authorized to seek repayment or release of the Intercompany Debt, in each case, as the Debtors find most effective and efficient under applicable law, including tax and regulatory requirements. *Id.* The payment of the Intercompany Debt shall be subordinated to the payment of all other claims subject to the Restructuring and the New Notes pursuant to section 3.5 of the EJ Plan. *Id.* The amount of Intercompany Debt owed by each Debtor as of the day before the EJ Petition Date is stated on Schedule L to the EJ Plan; however, a simplified chart thereof is as follows:

[24] On March 29, 2023, the Debtors, through the Information Agent, published on the Case Website and sent to Noteholders that elected Option A-1, Option A-2, Option B-1, or Option B-2 in the Election a notice (the "CADE Notice") regarding certain potential antitrust filing and disclosure obligations under Brazilian antitrust law. Foreign Rep. Decl. ¶ 44, n.26. As further detailed in the CADE Notice, Noteholders that anticipate receiving 5% or more of the DrillCo Equity may have certain filing and disclosure obligations to Brazil's antitrust and competition authority, *Conselho Administrativo de Defesa Econômica* (CADE).

Intercompany Debt				
Intercompany Debtors	**Intercompany Creditors**			
	ODN I	**Norbe VIII/IX**	**OODFL**	**Norbe Eight**
Norbe Six	$160.7 million	-	$675.2 million	-
Norbe Eight	-	$387.2 million	-	-
Norbe Nine	-	$387.9 million	-	$19.8 million
ODN I	-	-	$1.3 billion	-
ODN I Perfurações	$188.3 thousand	-	-	-

vii. Plan Releases

46. The EJ Plan provides for certain customary releases. At a high level, and as further detailed in paragraphs 25–30 of the Foreign Law Declaration, the releases in the EJ Plan fall into the following three categories: (a) the Existing Agent Release (as defined in the Foreign Law Declaration) in favor of the Trustees and other Existing Agents[25] for acts or omissions in connection with any Noteholder instructions, claims related to the Tranche 2 Notes, and any acts or omissions related to the Restructuring; (b) the DrillCo Consummation Release (as defined in the Foreign Law Declaration) in favor of the Ocyan Group, the Existing Agents, the Noteholders, and other Signatory Creditors (as defined in the Foreign Law Declaration), for claims related to the issuance or delivery of the New Notes, capitalization, and delivery of the DrillCo Equity to the Noteholders, and acts taken to effect the foregoing; and (c) the ConvertCo Consummation Release (as defined in the Foreign Law Declaration and, together with the Existing Agent

[25] "Existing Agents" means, collectively, (a) the 2021 Notes Trustee, in its capacity as trustee, registrar, transfer agent, and paying agent under the 2021 Indenture and the offshore accounts bank (the "2021 Offshore Account Bank") with respect to the 2021 Indenture, (b) TMF (Cayman) Ltd., TMF Austria GmbH, TMF Trustee Limited, and the 2021 Notes Collateral Agent as collateral agents in connection with the 2021 Tranche 2 Notes, (c) the 2022 Notes Trustee in its capacity as trustee, registrar, transfer agent, paying agent, and collateral agent under the 2022 Indenture and acting in any other capacity or role under or in connection with the 2022 Tranche 2 Notes, and HSBC Bank Plc, acting in its capacity as offshore accounts bank pursuant to the applicable accounts agreement under the 2022 Tranche 2 Notes, including any successor offshore accounts bank appointed pursuant to the applicable accounts agreements under the 2022 Tranche 2 Notes (the "2022 Offshore Account Bank" and, together with the 2021 Offshore Account Bank, the "Offshore Account Banks").

Release and the DrillCo Consummation Release, the "Releases") in favor of the Debtors and their affiliates from claims related to issuance of the ConvertCo Notes or the acts taken to do so. Foreign Law Decl. ¶¶ 25–30.

F. Connections to the United States and this District

47. The Debtors have property in the United States, including in this jurisdiction. Foreign Rep. Decl. ¶ 47. Each of the Debtors has an interest in cash paid by ODN I to Davis Polk for the benefit of each Debtor as retainer for Davis Polk's services in connection with the Brazilian EJ Proceeding and the Chapter 15 Cases, in a bank account located in Manhattan, New York (the "U.S. Bank Account"). *Id.* Additionally, the Indentures are governed by New York law and contain provisions submitting the Debtors to the jurisdiction of any New York state or United States federal court sitting in the Borough of Manhattan in the City of New York. *Id.* Upon information and belief, certain holders of the Tranche 2 Notes have headquarters or significant operations in the borough of Manhattan. *Id.*

BASIS FOR RELIEF REQUESTED

48. The Court should grant the Motion and recognize the Brazilian EJ Proceeding as the foreign main proceeding for the Debtors. Chapter 15 of the Bankruptcy Code is designed to, among other things, protect and maximize the value of a foreign debtor's assets and assist foreign representatives—such as the Foreign Representative—in the performance of their duties. In short, the central goal of chapter 15 is to "provide effective mechanisms for dealing with cases of cross-border insolvency while promoting international cooperation, legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of debtors' assets, and the rescue of financially troubled businesses." *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 132 (2d Cir. 2013) (citing 11 U.S.C. § 1501(a)) (internal quotation marks omitted). Consistent with these principles, the Foreign Representative commenced the Chapter 15 Cases to

obtain recognition of the Brazilian EJ Proceeding and recognition and enforcement of the Brazilian Confirmation Order and EJ Plan within the territorial jurisdiction of the United States.

49. As set forth below, each of the procedural requirements for recognition under section 1515 of the Bankruptcy Code has been satisfied. The Foreign Representative is the duly appointed "foreign representative" of the Brazilian EJ Proceeding with respect to the Debtors, and it is well-established that Brazilian restructuring proceedings are considered "foreign proceedings" for the purposes of chapter 15. Further, each Debtor's COMI (as defined below) is in Brazil—each of the Debtors operates exclusively in Brazil or exists as financing and special purpose entities that exist to singularly support such Brazilian operations. Foreign Rep. Decl. ¶ 8. Further, Brazil is the sole jurisdiction in which the Debtors' businesses can be comprehensively and efficiently restructured given that the Debtors form part of the Ocyan Group, which is based in Brazil and controlled from Brazil. *Id.* at ¶¶ 10, 58.

50. In the alternative, although the Foreign Representative is confident that the Brazilian EJ Proceeding constitutes a foreign main proceeding with respect to each Debtor within the definition set forth in section 1502(4) of the Bankruptcy Code, the Foreign Representative also seeks recognition of the Brazilian EJ Proceeding as a foreign nonmain proceeding with respect to any Debtor (if any) for which the Court determines that there is not sufficient basis to recognize the Brazilian EJ Proceeding as a foreign main proceeding. In such event, for the reasons set out below, the Debtors are eligible for nonmain recognition and related relief, including the imposition of a stay in accordance with sections 1521(a)(1) and (2) of the Bankruptcy Code, to the same extent such stay would be granted under section 1520(a) of the Bankruptcy Code, to ensure a comprehensive restructuring.

51. For the reasons set forth below and in the Supporting Documents, the relief sought herein is appropriate under chapter 15.

A. The Debtors Are Eligible for Chapter 15 Relief

52. To be eligible for chapter 15 relief, the Debtors must meet the general eligibility requirements under section 109(a) of the Bankruptcy Code as well as the more specific eligibility requirements under section 1517(a) of the Bankruptcy Code. In addition, the petition for recognition must meet the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4). The Debtors meet all such eligibility requirements.

1. The Debtors Meet Eligibility Requirements of Section 109(a) of the Bankruptcy Code

53. Section 103(a) of the Bankruptcy Code provides that chapter 11, which includes section 109(a), "appl[ies] in a case under chapter 15." 11 U.S.C. § 103(a). Thus, the Debtors must meet the eligibility requirements of section 109(a) of the Bankruptcy Code to obtain relief under chapter 15. Section 109(a) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." 11 U.S.C. § 109(a). Under section 109(a), a foreign debtor must reside or have a domicile, a place of business, or property in the United States to be eligible to file a chapter 15 petition. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013).

54. Section 109(a) of the Bankruptcy Code does not require a specific amount or dollar value of property in the United States, nor does it indicate when or for how long such property must have a U.S. situs. *See, e.g.*, *In re Berau Cap. Res. Pte Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015). Courts have accordingly held that attorney retainers deposited in New

York satisfy the "property in the United States" eligibility requirement of section 109(a) of the Bankruptcy Code. *See, e.g.*, *In re Poymanov*, 571 B.R. 24, 30 (Bankr. S.D.N.Y. 2017) ("A debtor's funds held in a retainer account in the possession of counsel to a foreign representative constitute property of the debtor in the United States and satisfy the eligibility requirements of section 109(a)."); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 372–374 (Bankr. S.D.N.Y. 2014) (noting the "line of authority that supports the fact that prepetition deposits or retainers can supply 'property' sufficient to make a foreign debtor eligible to file in the United States" and holding that cash in a client trust account maintained by U.S. counsel to the foreign representative satisfied section 109(a) (citing *In re Cenargo Int'l PLC*, 294 B.R. 571, 603 (Bankr. S.D.N.Y. 2003)); *see also In re Yukos Oil Co.*, 321 B.R. 396, 401–03 (Bankr. S.D. Tex. 2005); *In re Glob. Ocean Carriers*, 251 B.R. 31, 39 (Bankr. D. Del. 2000)).

55. Additionally, courts in this district have found that contracts (*e.g.*, indentures) governed by New York law or contracts containing provisions submitting parties to the jurisdiction of New York state and federal courts give rise to property rights supporting debtor eligibility under section 109(a) of the Bankruptcy Code. *See, e.g.*, *In re Avanti Commc'ns*, 582 B.R. 603, 610–611 (Bankr. S.D.N.Y. 2018) (holding that the debtor's indenture "is governed by New York law, which separately satisfies the 'property in the United States' requirement for eligibility to file a chapter 15 case under section 109(a) of the Bankruptcy Code."); *Berau*, 540 B.R. at 83–84 ("The Court concludes that the presence of the New York choice of law and forum selection clauses in the Berau indenture satisfies the section 109(a) 'property in the United States' eligibility requirement.").

56. Here, the Debtors satisfy the eligibility requirement of section 109(a) because the Debtors have property in the United States, in this jurisdiction. Specifically, each Debtor has an

interest in certain funds deposited with its U.S. counsel, Davis Polk & Wardwell LLP, as a retainer for its services in connection with the Chapter 15 Cases, which funds are held in a client trust account in New York, New York. Foreign Rep. Decl. ¶ 47. Additionally, the Indentures are governed by New York law and contain provisions submitting the parties to the jurisdiction of New York state and federal courts. *Id.*

57. Accordingly, the Debtors meet the eligibility requirements of section 109(a) of the Bankruptcy Code.

2. The Debtors Meet Eligibility Requirements of Section 1517(a) of the Bankruptcy Code

58. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, "an order recognizing a foreign proceeding shall be entered if . . . (1) such foreign proceeding for which recognition is sought is a foreign main proceeding . . . within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515." 11 U.S.C. § 1517(a). Each of those requirements has been satisfied for the reasons set forth below.

i. The Brazilian EJ Proceeding is a "Foreign Proceeding"

59. The Brazilian EJ Proceeding satisfies the general definition of "foreign proceeding" as set forth in section 101(23) of the Bankruptcy Code. Section 101(23) requires that a "foreign proceeding" be: (a) a collective judicial or administrative proceeding relating to insolvency or adjustment of debt; (b) pending in a foreign country; (c) under the supervision of a foreign court; and (d) for the purpose of reorganizing or liquidating the assets and affairs of the debtor. *See* 11 U.S.C. § 101(23); *see also In re ABC Learning Ctrs. Ltd.*, 728 F.3d 301, 308 (3d Cir. 2013); *In re Irish Bank Resolution Corp. (In Special Liquidation)*, 2014 Bankr. LEXIS 1990, *39-40 (Bankr. D. Del. Apr. 30, 2014). The Bankruptcy Code defines "foreign court" as a

"judicial or other authority competent to control or supervise a foreign proceeding." 11 U.S.C. § 1502(3).

60. *First*, the Brazilian EJ Proceeding is a collective judicial proceeding relating to insolvency or adjustment of debt. Foreign Law Decl. ¶¶ 6-8, 60. On December 12, 2022, the Debtors commenced the Brazilian EJ Proceeding in the Brazilian Court, which court has exclusive jurisdiction over matters relating to the claims being restructured. *Id.* ¶ 11. Moreover, the Brazilian EJ Proceeding is "collective" in that it administers the claims of all creditors whose claims are being restructured in a single proceeding. *Id.* at ¶¶ 8, 11

61. *Second*, the Brazilian EJ Proceeding is pending in a foreign country—Brazil—under a law relating to insolvency, the Brazilian Bankruptcy Law. *Id.* at ¶ 6.

62. *Third*, through the Brazilian EJ Proceeding, the Debtors' actions vis-à-vis the Restructuring are subject to the supervision of the Brazilian Court. *Id.* at ¶¶ 24, 60.

63. *Fourth*, the Brazilian EJ Proceeding is for the purpose of restructuring the Tranche 2 Notes and Intercompany Debt as part of the overall restructuring of the Drilling Business. *Id.* at ¶ 52; Foreign Rep. Decl. Section E.2. The Brazilian EJ Proceeding is intended to protect the Debtors so that they may continue to operate and pursue an orderly restructuring pursuant to the EJ Plan.

64. Furthermore, it is well-established by this Court that Brazilian extrajudicial reorganizations ("EJs") under the Brazilian Bankruptcy Law (and other Brazilian restructuring laws) constitute "foreign proceedings." *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 40] (recognizing an extrajudicial restructuring proceeding under the Brazilian Bankruptcy Law); *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15] (same);

In re Odebrecht Óleo E Gás S.A., No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (same); *In re Lupatech S.A.*, No. 14-11559 (SMB) (Bankr. S.D.N.Y. July 14, 2014) [ECF No. 31] (same).[26]

ii. The Foreign Representative is a Proper "Foreign Representative"

65. The Foreign Representative is the proper "foreign representative" of Debtors, thereby satisfying sections 101(24) and 1517(a)(2) of the Bankruptcy Code. Section 101(24) of the Bankruptcy Code provides that a foreign representative be authorized "to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). The Bankruptcy Code does not require that the foreign representative be appointed by the foreign court. Instead, a debtor may appoint a foreign representative pursuant to corporate authorizations passed in accordance with applicable corporate laws. *See, e.g.*, *In re Oi Brasil Holdings Coöperatief U.A.*, 578 B.R. 169, 183 (Bankr. S.D.N.Y. 2017) (recognizing appointment of foreign representative "pursuant to resolutions and powers of attorney signed by authorized representatives of each [foreign debtor]"); *In re OAS S.A.*, 533 B.R. 83, 95 (Bankr. S.D.N.Y. 2015) (holding that the "Bankruptcy Code does not require the judicial authorization or appointment of the foreign representative").

66. Here, the Foreign Representative is an individual who has been duly appointed by the respective Debtors' boards of directors, pursuant to the relevant corporate laws, as their foreign representative in accordance with section 101(24) of the Bankruptcy Code and to

[26] It is similarly well-established by this Court that Brazilian judicial reorganizations (RJs) constitute "foreign proceedings." *See, e.g.*, *In re Americanas S.A.*, No. 23-10092 (MEW) (Bankr. S.D.N.Y. March 3, 2023) [ECF No. 32] (recognizing a Brazilian judicial reorganization proceeding as a foreign main proceeding); *In re U.S.J. - Açúcar e Álcool S.A.*, No. 22-10320 (DSJ) (Bankr. S.D.N.Y. April 14, 2022) [ECF No. 21] (same); *In re Samarco Mineração S.A. – Em Recuperação Judical*, No. 21-10754 (LGB) (Bankr. S.D.N.Y. May 31, 2021) [ECF No. 22] (same); *In re Odebrecht, S.A.*, No. 19-12731 (SMB) (Bankr. S.D.N.Y. Sept. 18, 2019) [ECF No. 22] (same); *In re Serviços de Petróleo Constellation*, 600 B.R. 237, 270 (same).

commence these Chapter 15 Cases. Foreign Rep. Decl. ¶ 33. Moreover, Courts in this district routinely recognize the appointment of foreign representatives in similar manners as acceptable for purposes of commencing chapter 15 cases. *See, e.g.*, *In re Andrade* [ECF No. 40] (finding that a person appointed by each of the chapter 15 debtors' board of directors or shareholders, as applicable, was the duly appointed foreign representative within the meaning of section 101(24) of the Bankruptcy Code); *see also U.S.J. - Açúcar e Álcool S.A.*, No. 22-10320 (DSJ) (Bankr. S.D.N.Y. April 14, 2022) [ECF No. 21] (same); *In re Samarco Mineração S.A. – Em Recuperação Judical*, No. 21-10754 (LGB) (Bankr. S.D.N.Y. May 31, 2021) [ECF No. 22] (same); *In re Odebrecht Engenharia* [ECF No. 15] (same).

iii. The Petitions Were Properly Filed Under Sections 1504 and 1509 and Meet the Requirements of Section 1515 and Bankruptcy Rule 1007(a)(4)

67. The third and final requirement for recognition of a foreign proceeding under section 1517(a) of the Bankruptcy Code is that the petition for recognition meets the procedural requirements of section 1515 of the Bankruptcy Code. See 11 U.S.C. § 1517(a)(3). Here, all of those procedural requirements are satisfied.

68. *First*, the Foreign Representative duly and properly commenced these Chapter 15 Cases in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by filing the *Official Form 401 Petitions* (collectively, the "Petitions")[27] with all the documents and information required by section 1515(b) and (c). *See In re Bear Stearns*, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) ("A case under chapter 15 is commenced by a foreign representative filing a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code.").

[27] The Petitions are filed as ECF No. 1 at Case Nos. 23-10557, 23-10559, 23-10560, 23-10561, 23-10562, 23-10563, 23-10564, and 23-10565.

69. *Second*, in accordance with section 1515(b)(1)–(2) and (d) of the Bankruptcy Code, the Foreign Representative has submitted evidence, translated into English, of the existence of the Brazilian EJ Proceeding and the appointment of the Foreign Representative as foreign representative thereof. *See* Initial Court Order; Authorizing Resolutions.

70. *Third*, in accordance with section 1515(c) of the Bankruptcy Code, the Bankruptcy Disclosures filed contemporaneously herewith contain a statement that (a) the Brazilian EJ Proceeding is the only foreign proceeding currently pending with respect to ODN I Perfurações and (b) the Brazilian EJ Proceeding and the 2017 EJ are the only foreign proceedings currently pending with respect to each of the Overseas Debtors.

71. *Fourth*, with the filing of the Bankruptcy Disclosures contemporaneously herewith, the Foreign Representative has also satisfied the additional filing requirements set forth in Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (a) corporate ownership statements containing the information described in Bankruptcy Rule 7007.1; and (b) lists containing the names and addresses of all persons or bodies authorized to administer the foreign proceedings of the Debtors and all parties to litigation pending in the United States in which the Debtors are a party at the time of the filing of the Petitions.

3. The Debtors Meet Eligibility Requirements of Section 1517(a) of the Bankruptcy Code

i. A COMI Analysis Under U.S. law Focuses on Where a Debtor's Business Interests are Principally Centered

72. With respect to each of the Debtors, the Brazilian EJ Proceeding is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code. A "foreign main proceeding" is defined in the Bankruptcy Code as a "foreign proceeding pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1502(4). Neither the Bankruptcy Code nor the UNCITRAL Model Law on Cross-Border Insolvency (the "Model

Law") defines the center of main interests ("COMI"). However, there is a rebuttable presumption that a debtor's COMI is its "registered office." 11 U.S.C. § 1516(c). Where any "evidence to the contrary" is presented, courts "must examine all of the evidence to determine where [a debtor's] center of main interest lies." *Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 595 (Bankr. S.D.N.Y. 2012). In fact, this Court has observed that the registered office presumption "is not a preferred alternative where there is a separation between a corporation's jurisdiction of incorporation and its real seat." *Bear Stearns I*, 374 B.R. at 128 (internal citations omitted). Thus, where any "evidence to the contrary" is presented, the presumption has no role to play. *Collins*, 484 B.R. at 595 (Bankr. S.D.N.Y. 2012).

73. Accordingly, courts view COMI as a concept rooted in substance over form—the debtor's "real seat," as this Court has found. *See Bear Stearns I*, 374 B.R. at 128, 130. In short, a COMI analysis inquires as to the debtor's substantive "locus of operations"—the center of its operations, purpose, function, and activities, among others. *See Phoenix Four, Inc. v. Strategic Res. Corp.*, 446 F. Supp. 2d 205, 214–15 (S.D.N.Y. 2006) (internal citations and quotations omitted).

74. In assessing whether the registered office statutory presumption withstands scrutiny, courts have developed a list of nonexclusive factors for determining COMI, which, while not to be applied mechanically, are helpful in assessing an entity's COMI. *See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 137–38 (2d Cir. 2013) (referring to the COMI factors developed by the court in *In re SPhinX, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006)); *In re Serviços de Petróleo Constellation S.A.*, 613 B.R. 497, 508 (Bankr. S.D.N.Y. 2020) (same); *see also In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 333 (Bankr. D. Del. 2010), *aff'd*, 728 F.3d 301 (3d Cir. 2013) (internal citations omitted). U.S. case

law notes that this COMI analysis should be performed on an entity-by-entity basis. *See In re Oi Brasil Holdings*, 578 B.R. at 169, 206 (noting that the chapter 15 regime "require[s] COMI inquiries for each debtor entity rather than for collective corporate groups"). However, the Court should still take into account a debtor's integration into and function within an integrated corporate group, particularly where the debtor is a holding company and/or has no function independent from that of its group. *See OAS S.A.*, 533 B.R. at 101–02 (COMI analysis for a foreign special-purpose company included consideration of its participation in a larger group).

75. Many courts interpret COMI to mean "principal place of business." *See In re Fairfield Sentry Ltd.*, No. 10 Civ. 7311 (GBD), 2011 U.S. Dist. LEXIS 105770 at *10 (S.D.N.Y. Sept. 15, 2011) ("A debtor's COMI has also been equated with the concept of a 'principal place of business.'") (internal citations omitted). Indeed, courts and commentators have agreed that Congress could have invoked the same substantive inquiry with "principal place of business," but instead chose to leave un-amended the "COMI" phrasing only to keep its statutory text strictly uniform with the Model Law. *See In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 72–73 (Bankr. S.D.N.Y 2011) ("Chapter 15 was drafted to follow the Model Law as closely as possible, with the idea of encouraging other countries to do the same . . . ."). It is therefore unsurprising that courts have used the terms "center of main interests" and "principal place of business" interchangeably. *Millennium Glob.*, 458 B.R. at 72.

76. Thus, many courts inquire first and foremost as to the place in which a debtor actually does business (*i.e.*, the location of its economic activities) when determining its COMI. *See Morning Mist Holdings*, 714 F.3d at 127, 130 ("The relevant principle . . . is that the COMI lies where the debtor conducts its regular business."); *In re Creative Fin., Ltd. (In Liquidation)*, 543 B.R. 498, 499, 517 (Bankr. S.D.N.Y. 2016); *British Am.*, 425 B.R. 884, 913–14 (Bankr. S.D.

Fla. 2010) (rephrasing COMI as "the hub of the debtor's business" and finding that the debtor's COMI did not lie in its jurisdiction of incorporation because the debtor "simply did not do business" there). This analysis must sensibly be tailored depending on the nature of the debtor and the type of business in which it engages. *British Am.*, 425 B.R. at 911 (activity relevant to a COMI determination "depend[s] on the nature of the debtor's business," *e.g.*, where "[a debtor] operated as an insurance company, actuarial tasks, underwriting, and claims adjustment should be considered").

77. Courts in this district have developed a list of factors that a court may consider when determining a debtor's COMI where the "registered office" presumption does not govern. These factors include:

> [T]he location of the debtor's headquarters; the location of those who actually manage the debtor (which conceivably could be the headquarters of a holding company); the location of the majority of the debtor's creditors or a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes" . . . [the] "principal place of business" . . . [and] the expectations of third parties [as to the] debtor's COMI.

Fairfield Sentry, 2011 U.S. Dist. LEXIS 105770 at *10 (citing *Bear Stearns II*, 389 B.R. at 336); *In re SPhinX*, 351 B.R. at 103, 117; *British Am.*, 425 B.R. at 720). The Second Circuit added as additional possible factors "the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes." *Fairfield Sentry*, 714 F.3d at 130. These factors, the Second Circuit reasoned, are "in the public domain" and thus "ascertainable and not easily subject to tactical removal." *Id.* at 136–38 (noting the "importance of factors that indicate regularity and ascertainability"); *see also British Am.*, 425 B.R. at 912 (finding that the "location of a debtor's COMI should be readily ascertainable by third parties").

78. While each of the *Fairfield Sentry* factors serves as a "helpful guide" in assessing a debtor's COMI, they are not exclusive, nor is any one factor required or dispositive. *See*

Fairfield Sentry, 714 F.3d at 137 (noting that "[c]onsideration of these specific factors is neither required nor dispositive" and warning against a mechanical application of the factors). The factors should be applied in light of pragmatic considerations for the "maximization of the debtor's value" and "the reasonable interests of parties in interest," as well as creditors' support for or acquiescence to a proposed COMI "because their money is ultimately at stake." *SPhinX*, 351 B.R. at 117.

79. In determining which jurisdiction is best suited to house the main restructuring proceeding of a debtor, a court should consider which country is most involved in the debtor's commercial activities. *In re Tien Chiang*, 437 B.R. 397, 403 (Bankr. C.D. Cal. 2010) ("The international insolvency legal regime is based on the assumption that every international entity has a home. That country has the greatest interest in the status of the debtor and in the outcome of the insolvency case. That country has also the greatest interest in the debtor because that country provides the legal regime that governs much of the debtor's commercial activities in most cases, including many matters unrelated to insolvency law.").

ii. A COMI Analysis for Holding Companies Serving a Larger Corporate Group is Specially Tailored

80. As noted above, courts in this district generally look at the *Fairfield Sentry* factors to guide the analysis in determining the location of a debtor's COMI, "but consideration of [such] specific factors is neither required nor dispositive." *Fairfield Sentry*, 714 F.3d at 137. Indeed, the Second Circuit instructs that the COMI analysis is a flexible one, given that Congress, in declining to provide a definition "for a term that is not self-defining," left the text "open-ended, and invite[d] development by courts, depending on [the] facts presented, without prescription or limitation." *Id.* at 138. Accordingly, and consistent with a flexible and pragmatic approach to recognition, U.S. courts have tailored their COMI analyses varyingly across a wide range of facts

and circumstances. When determining the location of COMI for a holding company that is integrated with and exists only in the context of a larger corporate group, such as a holding or financing entity, courts focus the COMI analysis on those particular considerations most indicative of this specialized entity's "real seat." *See Bear Stearns I*, 374 B.R. at 128.

81. *First*, when considering the COMI of a holding company integrated with a larger corporate group, such as a holding company or special-purpose financing company, the court typically begins with a query into the holding company's role within and integration with the larger corporate group. *See OAS S.A.*, 533 B.R. at 101 (observing that the Austrian special-purpose company "had no other business except to pay [the notes] off," and adding that "the Brazilian [b]ankruptcy [p]roceedings provide the only realistic chance to repay [those] [n]otes"); *see also Oi Brasil*, 578 B.R. at 226–227 (stating that the Dutch special-purpose company's COMI lay in Brazil where the company had "no operations or business independent of the Oi [g]roup and [were] operated within the Oi [g]roup as part of a single, integrated economic unit . . .").

82. Holding companies may be considered substantially integrated for the purposes of a COMI analysis in the following situations: (a) when they have no direct employees or directly own no operational assets, as in the case of specialized holding or financing companies; (b) where they belong to and exist only with reference to a larger corporate group with integrated operations, customers, corporate teams, marketing, research, development, strategy, human resource management, and administrative activities; and/or (c) where the group is financially integrated and interdependent as a result of intercompany loans and cross-company guarantees. *See id.* at 227 (finding that the COMI of a Dutch special-purpose company lay in Brazil with its corporate group where it was "managed from the principal executive office of Oi in Rio de

Janeiro, Brazil with every aspect of the Oi [group's] operations, finances, corporate management, employee management and payroll, and short and long-term strategic planning directed from Brazil").

83. Even where foreign holding companies maintain registered offices in, have directors living in, hold board meetings in, and are individually directed from their jurisdictions of organization, courts have still considered the entity's corporate reality as a part in a larger, more complex organization. *See id.* at 177 (concluding that the Dutch special-purpose company in question had its COMI in Brazil even though it "file[d] financial statements with the Dutch Chamber of Commerce. . . pa[id] taxes in the Netherlands. . . file[d] tax returns with Dutch authorities in the Netherlands. . . ha[d] retained various professionals and advisors in the Netherlands. . ." and had an employee in the Netherlands); *see also OAS S.A.*, 533 B.R. at 101 (stating that while the Austrian special-purpose company's registered office was located in Austria and it satisfied the "services required under Austrian law," the special-purpose company had no other business beyond borrowing and lending and thus its COMI lay in Brazil with that of its corporate group).

84. *Second*, courts evaluating the COMI of a holding company focus special attention on the expectations of the debtor's creditors. While creditor expectations can factor in to a COMI analysis for all debtors—*see Fairfield Sentry*, 714 F.3d at 130, 137—they are particularly significant for financing holding companies. For example, in both *Oi Brasil* and *OAS*, the investors in the bonds issued by the special-purpose companies were advised in the offering memoranda and/or debt documentation that the entities had substantial connections in Brazil and thus, the creditors assumed the risks of investing in a Brazilian enterprise. *Oi Brasil*, 578 B.R. at 228–29 (finding that the offering materials and indentures for the notes issued by the Dutch

special-purpose company made clear that "any chance of repayment stems from the revenue-producing operations in Brazil"); *OAS*, 533 B.R. at 103 (noting that purchasers of the notes issued by the Austrian special-purpose company "expected to receive repayment from the cash generated by the operations of the [corporate group], and in the event of a default, might ultimately have to enforce their rights in a Brazilian bankruptcy proceeding").

85. *Third*, courts in this district have also found that the existence of ongoing judicial restructuring proceedings is an important factor supporting COMI in the country where those proceedings are being held even if a debtor previously conducted all activities elsewhere. *In re Modern Land (China) Co., Ltd.*, 641 B.R. 768 at 783, 789 (Bankr. S.D.N.Y. 2022) ("Cayman court's supervision of the [scheme proceeding], in light of the other factors present here, is enough for the Court to conclude that the Debtor's COMI for the proceeding involving the single class of [existing noteholders] was in the Cayman Islands."); *see also In re Suntech Power Holdings Co., Ltd.*, 520 B.R. at 417 (Bankr. S.D.N.Y. 2014) (finding COMI shifted to Cayman Islands from China as a result of Cayman scheme restructuring proceeding); *In re Culligan Ltd.*, 2021 Bankr. LEXIS 1783 at 36, 38 (Bankr. S.D.N.Y. 2021) (finding Bermuda COMI because Bermuda restructuring proceeding made Bermuda law "applicable with respect to any disputes arising with respect to [that proceeding]"). In *Modern Land*, Judge Glenn analyzed this issue in detail and concluded the principle applied to a Cayman scheme that, similar to the Brazilian EJ Proceeding, restructured a single class of external creditors without appointment of a foreign liquidator. *In re Modern Land*, 641 B.R. at 783. Here, the ongoing Brazilian EJ Proceeding and application of Brazilian law to the Debtors which are the subject of that proceeding, further support finding COMI of the Debtors in Brazil.

iii. Substantial Evidence Across the Debtors and the Ocyan Group's Drilling Business Shows that Each of the Debtors has its COMI in Brazil

86. Each of the Debtors in these Chapter 15 Cases has its COMI in Brazil. The Debtors' own or exist to support the charter of the Drilling Units, which operate exclusively in Brazilian waters, for primarily Brazilian customers, and pursuant to Brazilian-law governed charter agreements. Foreign Rep. Decl. ¶ 8. Moreover, while the Debtors own or exist to provide financing to support the charter of the Drilling Units, the Debtors do not operate the Drilling Units. *Id.* Instead, the Parent Operating Entities, both Brazilian incorporated and controlled entities, operate the Drilling Units in Brazilian waters for the Debtors pursuant to various operating and service agreements. *Id.* at ¶¶ 10, 13.

87. Further, while only one of the Debtors, ODN I Perfurações, is incorporated in Brazil, all of the Debtors are subject to the governing control of Brazilian non-Debtor Ocyan S.A., which makes strategic decisions for the entire Ocyan Group (including the Debtors). *Id.* at ¶¶ 9–11. Further, key strategic and operating decisions for the entire Ocyan Group are made by the CEO, CFO (who is the Foreign Representative in the Chapter 15 Cases), senior management, and the board of directors of Ocyan S.A., who are based in, and work from, the Rio Offices. *Id.* Lastly, while the Overseas Debtors maintain a presence in their respective jurisdictions of incorporation, and the Austrian Debtors have boards of directors based in Austria, given that the Overseas Debtors form part of the greater Ocyan Group (which provides the Debtors with charter and related operational services), the key corporate functions of all Debtors are provided from the Rio Offices through Ocyan S.A. and Ocyan Drilling. *Id.* ¶¶ 9–15. These functions include corporate accounting, accounts payable, accounts receivable, financial planning, internal auditing, marketing, treasury, real estate, research and development, tax services, finance, legal, human resources, payroll, billing, freight management, procurement, cash management functions and

engineering services. *Id.* at ¶ 11. These facts demonstrate that, although the Overseas Debtors maintain their registered offices outside Brazil, the registered-office COMI presumption is easily rebutted and should be afforded no weight given the substantial evidence to the contrary.

88. The above activities demonstrate the existence of a shared, centralized COMI for all of the Debtors as a part of their fully integrated, shared activities. *See British Am.*, 425 B.R. at 911 (the location of business functions such as "financial, administrative, marketing, information technology, investment, and legal functions" speak to the location of COMI). Moreover, the fact that day-to-day activities are centered in the Rio Offices or on the Drilling Units that are operating in Brazilian waters for primarily Brazilian customers further supports a finding of COMI in Brazil. The fact that the Austrian Debtors' boards of directors are based in Austria does not alter this conclusion. *Id.* at 912 (noting that "[w]hile a corporate entity is overseen by a board of directors, in larger organizations the day to day management typically is undertaken by others," and finding that COMI lay not with the board of directors in the jurisdiction of incorporation, but with the location of the debtor's "day to day activity" and "primary business function[]").

89. Further, as holding and/or special purpose and financing entities, the Debtors should be carefully considered under the U.S.-law COMI analysis. The Debtors, like their counterparts in the *Oi* and *OAS* cases, warrant a tailored COMI analysis under the prevailing U.S. case law. That is because the Debtors are "part of, and inseparable from, [their corporate] group in Brazil." *OAS*, 533 B.R. at 103. The Debtors are dependent on their Brazilian Parent Operating Entities to actually operate the Drilling Units, and thereby pay back their creditors. Accordingly, many of the traditional factors—such as place of incorporation or location of board

of directors—which courts rely on to identify a debtor's COMI may be inapplicable to some or all of the Debtors. *OAS*, 533 B.R. at 101; *see also Oi Brasil*, 578 B.R. at 225–32.

90. Further, for each of the Debtors, their creditors' expectations of repayment derive from revenue earned exclusively in Brazil. As set forth in paragraph 97 below, pursuant to the terms of the Indentures, the Noteholders have had notice that restructuring of the Overseas Debtors' obligations could take place in Brazil. Moreover, the Debtors have historically and continue to hold themselves out to be part of a Brazilian enterprise in official corporate communications and press releases. Foreign Rep. Decl. ¶¶ 28, 58. In sum, purchasers of the Tranche 2 Notes understood and knew that they were investing in a Brazilian-centered enterprise, that their returns would derive from operations taking place in Brazil, and therefore that a restructuring could similarly take place in Brazil. Finally, the ongoing Brazilian EJ Proceeding also supports a common COMI in Brazil for each of the Debtors. Each of the Debtors took the necessary steps to centralize each Debtors' restructuring proceeding in Brazil, and appointed the Foreign Representative, who is a Brazilian citizen who works in the Rio Offices. *Id.* ¶ 11; Authorizing Resolutions. *See In re Suntech*, 520 B.R. at 418 ("Centered in the Cayman Islands, the JLPs [foreign representatives] took the necessary steps to centralize the administration of the Foreign Proceeding there.").

iv. In the 2017 Chapter 15 Order, this Court Found that each of the Overseas Debtors Has its COMI in Brazil

91. As discussed in paragraph 19 above, this Court has previously found that each of the Overseas Debtors (each of whom was a 2017 Debtor) has their COMI in Brazil. *See* 2017 Chapter 15 Order. Although Ocyan S.A. was a 2017 Debtor but is not a Debtor in these Chapter 15 cases, almost all of the same factors supporting the Overseas Debtors having had their COMI in Brazil that were relevant in 2017 continue to apply today. For example, the Debtors continue

to be controlled by Brazilian parent Ocyan S.A. (f/k/a Odebrecht Óleo e Gás S.A.) from the Rio Offices and operate Drilling Units in Brazilian waters for primarily Brazilian customers. *Supra* ¶¶ 86, 88. In short, for the same reasons that this Court found in the 2017 Chapter 15 Order that the COMI of the Overseas Debtors was Brazil, this Court should again find that Brazil is where their COMI remains.

92. The only Debtor that was not a 2017 Debtor is ODN I Perfurações. As a Brazilian registered company, the COMI of ODN I Perfurações is presumptively Brazil. Moreover, as noted above, ODN I Perfurações exists to support the financing and operational needs of the Ocyan Group's Drilling Business, which is managed from, and operates exclusively in, Brazil. Foreign Rep. Decl. ¶¶ 8, 15

v. Entity-Specific Factors also Show that each of the Debtors has its COMI in Brazil

93. While analysis of the Ocyan Group's Drilling Business and the role the Debtors play within it supports a finding that the Debtors' COMI is in Brazil, entity-specific factors also support a finding that each of the Debtors has their COMI in Brazil. For example:

94. Austrian Debtors: Each of the Austrian Debtors—Norbe Six, Norbe Eight, Norbe Nine, ODN I and Tay IV—has its registered office in Vienna, Austria and is a guarantor of the Tranche 2 Notes. *Id.* at ¶ 13. Moreover, each of the Austrian Debtors is a wholly-owned indirect subsidiary of Ocyan S.A., and (except for Tay IV)[28] owns and charters the Drilling Units, which all operate in Brazil. *Id.* While each of the Austrian Debtors' boards of directors is based in Austria, the principal strategic decisions with respect to them and their Drilling Units' operations are made in Brazil by Ocyan S.A.'s board of directors and the Parent Operating Companies'

[28] Tay IV previously owned and chartered a drilling rig that the Ocyan Group has subsequently sold.

senior management. *Id.* None of the Austrian Debtors have employees; instead, the great majority of employees that work on the Drilling Units are employed by the Parent Operating Companies, which are Brazilian-incorporated and controlled entities. *Id.* Other than the actions necessary for chartering the Drilling Units in Brazil, none of the Austrian Debtors conduct any business in Austria. *Id.*

95. Cayman Debtors: Each of the Cayman Debtors—Norbe VIII/IX and OODFL—has its registered office in Grand Cayman, Cayman Islands and is an issuer of the Tranche 2 Notes. *Id.* at ¶ 14. Norbe VIII/IX is owned 50% by Norbe Eight and 50% by Norbe Nine and OODFL is owned 24.27% by Norbe Six, 50.18% by ODN I, and 25.55% by Tay IV. *Id.* The Cayman Debtors are not operational entities, do not engage in autonomous entrepreneurial activities and were constituted as financing vehicles for the Ocyan Group's Drilling Business, which operates in Brazil. *Id.* The Cayman Debtors' boards of directors are based in Brazil and principal strategic decisions with respect to them are made by Ocyan S.A.'s board of directors and senior management. *Id.* Neither Cayman Debtor has any employees. *Id.*

96. ODN I Perfurações: ODN I Perfurações is an entity organized under the laws of Brazil with its registered office in Rio de Janeiro, Brazil. *Id.* at ¶ 15. ODN I Perfurações is a wholly-owned indirect subsidiary of Ocyan S.A. *Id.* It is not an issuer or guarantor under the Tranche 2 Notes. *Id.* ODN I Perfurações, as borrower, owes Intercompany Debt to ODN I, as lender, under an Intercompany Loan Agreement, and this Intercompany Debt is being restructured pursuant to the EJ Plan.[29] *Id.* ODN I Perfurações is not an operational entity; however, its existence stems from the fact that it was originally party to the services agreement

[29] The Overseas Debtors are also borrowers and lenders under the Intercompany Loan Agreements, as further detailed in paragraph 45 above.

relating to the ODN I Drillships, which operate in Brazil. *Id.* ODN I Perfurações' board of directors is based in Brazil and it has no employees. *Id.*

97. The Indentures include numerous provisions that provide notice to the holders of the Project Notes that restructuring of the Overseas Debtors' obligations could take place in Brazil—as was the case for the 2017 EJ (as defined and discussed below). For example, the Indentures and the global note for each of the Tranche 2 Notes specifically provide for payment of post-petition interest on the Tranche 2 Notes under Brazilian Bankruptcy Law.[30] *Id.* at ¶ 18. Similarly, the Indentures' waterfall provisions explicitly apply in any proceeding under Brazilian Bankruptcy Law and the events of default under each Indenture include commencement of a voluntary or involuntary case against any Overseas Debtor under Brazilian Bankruptcy Law.[31] *Id.* In addition, the notice address for the Overseas Debtors that is included in the Indentures and the global note for each of the Tranche 2 Notes is also in Brazil.[32] *Id.* The Indentures also make repeated reference to Brazilian rules, regulations, currency, and institutions, including in the definitions of "Business Day," "Cash Equivalents," and "Governmental Authority."[33] *Id.* Importantly, the definition of "Bankruptcy Law" in each Indenture includes both the Brazilian Bankruptcy Law and the Bankruptcy Code.[34] *Id.*

98. Additionally, the Court previously found that the Debtors, with the exception of ODN I Perfurações—a Brazilian incorporated entity and controlled entity—have their COMI in

[30] 2021 Indenture § 4.01(c), Back of Global Note for 2021 Tranche 2 Notes § (3); 2022 Indenture § 4.01(c), Back of Global Note for 2022 Tranche 2 Notes § (3).

[31] 2021 Indenture § 6.10(c), § 6.01(5)–(6); 2022 Indenture § 6.10(c), § 6.01(5)–(6).

[32] 2021 Indenture, § 13.01; 2022 Indenture, § 13.01.

[33] 2021 Indenture § 1.01; 2022 Indenture § 1.01.

[34] *Id.*

Brazil. *Id.* ¶ 20. Because the COMI for each of the Debtors is in Brazil, the Brazilian EJ Proceeding pending in the Debtors' COMI is, and should be recognized as, the foreign main proceeding of each of the Debtors, pursuant to section 1517(b)(1) of the Bankruptcy Code.

99. For all of the reasons set forth above, it is respectfully submitted that all of the requirements of section 1517(a) have been satisfied and that the Debtors are entitled to all of the relief provided by section 1520 of the Bankruptcy Code. Accordingly, the Court should enter the Proposed Order attached hereto as Exhibit A recognizing the Brazilian EJ Proceeding as a foreign main proceeding.

4. In the Alternative, the Court Should Find that the Brazilian EJ Proceeding is a Foreign Nonmain Proceeding of each of the Debtors

100. For all the reasons set forth above, the Brazilian EJ Proceeding should be recognized as the "foreign main proceeding" of each of the Debtors. Nevertheless, should this Court conclude that the Brazilian EJ Proceeding is not the foreign main proceeding of any of the Debtors, in the alternative, the Brazilian EJ Proceeding should be recognized as a "foreign nonmain proceeding" within the meaning of section 1502(5) for any such Debtors pursuant to section 1517(b)(2) of the Bankruptcy Code.

101. Courts will recognize a foreign proceeding as a "foreign nonmain proceeding" if "the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending." 11 U.S.C. § 1517(b)(2). Chapter 15 provides no evidentiary presumption as to whether a debtor has an establishment in a particular jurisdiction. *See Bear Stearns II*, 389 B.R. 325, 338 (S.D.N.Y. 2008). Thus, whether an establishment exists in a particular location is "essentially a factual question," *id.* at 338, and the Foreign Representative bears the burden of proof. *British Am.*, 425 B.R. at 915. Importantly, section 1502(2) of the Bankruptcy Code defines an "establishment" as "any place of operations where the debtor carries

out a nontransitory economic activity," and courts have required proof of more than a "mail-drop presence." *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 277 (internal citations omitted); 11 U.S.C. § 1502(2). At least one court—noting the "paucity of U.S. authority" on the subject—has favorably cited a "persuasive" English law holding that the presence of an asset and minimal management or organization can suffice to create an establishment. S*ee Millennium Glob. I*, 458 B.R. at 84–85 (citing *Shierson v. Vlieland-Boddy*, [2005] EWCA Civ. 974, [2005] W.L.R. 3966 (2005)).

102. As with a determination of a debtor's COMI, whether the debtor has an "establishment" in a country is determined at the time of filing the chapter 15 petition. *See Beveridge v. Vidunas (In re O'Reilly)*, 598 B.R. 784, 803 (Bankr. W.D. Pa. 2019) (adopting *Fairfield Sentry* and *In re Ran*, 607 F.3d 1017 (5th Cir. 2010) findings that "the presumptive date from which [a c]ourt is to ascertain [a] debtor's center of main interests and/or establishment is the date the Chapter 15 petition was filed"). Several factors "contribute to identifying an establishment: the economic impact of the debtor's operations on the market, the maintenance of a 'minimum level of organization' for a period of time, and the objective appearance to creditors whether the debtor has a local presence." *Millennium Glob. I*, 458 B.R. 85. Showing of impact of the debtor's activities on the foreign jurisdiction involves a "showing of a local effect on the marketplace," *In re Creative Fin., Ltd. (In Liquidation*), 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016), evidenced by, among other things, engagement of "local counsel and commitment of capital to local banks," *Millennium Glob. I*, 458 B.R. at 86-67; *see also In re Modern Land*, 641 B.R. at 768, 786.

103. Notably, a basis for recognition of a foreign nonmain proceeding has been found in this district where the debtor's affiliates "have substantial and ongoing business connections"

in the jurisdiction, even though its COMI was determined to be in another country. *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 282 (granting recognition of a Brazilian judicial reorganization proceeding as a foreign nonmain proceeding where the debtor's COMI was found to be in Luxembourg). In *Constellation*, the U.S. bankruptcy court found that "non-transitory ties to Brazil are sufficient to recognize the Brazilian Proceeding as a foreign nonmain proceeding with respect to [such non-Brazilian debtor]." *Id.*

104. Here, the Debtors are part of an integrated corporate group doing business exclusively in, and managed from, Brazil. Foreign Rep. Decl. ¶¶ 8–11. Accordingly, each of the Debtors maintains a "minimum level of organization" in Brazil. *See Millennium Glob. I*, 458 B.R. 85. In addition, the Indentures and other disclosures discussed above confirm that each Overseas Debtor objectively appears to creditors to have a local presence in Brazil. *Supra*. ¶ 97. In the event that the Court determines that one or more Debtors lacks COMI in Brazil, the facts set forth above provide sufficient evidence that each Debtor maintains an establishment in Brazil.

105. In addition, the relief a court may grant in a foreign nonmain proceeding is "nearly identical" to the relief provided to a foreign main proceeding (*In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 272). Accordingly, in the event that this Court finds that the Brazilian EJ Proceeding is a foreign nonmain proceeding with respect to any of the Debtors, the Foreign Representative respectfully requests that all relief requested in this Motion be granted as appropriate relief or additional assistance, pursuant to sections 1521 or 1507 of the Bankruptcy Code, respectively, for the reasons further detailed below.

B. Enforcement of the Brazilian Confirmation Order and EJ Plan and Related Relief

106. The Foreign Representative respectfully seeks entry of an order recognizing and enforcing the EJ Plan and Brazilian Confirmation Order and entrusting to the Foreign Representative the administration, realization, and distribution of the Debtors' assets within the

territorial jurisdiction of the United States, in each case, pursuant to sections 1521(a) and (b), 1507 and 105 of the Bankruptcy Code.

107. Upon the recognition of a foreign main proceeding (or nonmain proceeding) and at the request of a foreign representative, section 1521(a) of the Bankruptcy Code authorizes the Court, at the request of a recognized foreign representative, to grant "any appropriate relief," which may include, among other things, with limited exceptions, granting any additional relief that may be available to a trustee. *See* 11 U.S.C. § 1521(a)(7).

108. In plenary chapter 11 proceedings, a trustee may obtain a court order directing any party to take "any act . . . necessary for the consummation of the plan" (11 U.S.C. § 1142(b)), which can include provisions for the "issuance of securities of the debtor, . . . in exchange for claims or interests" 11 U.S.C. § 1123(a)(5)(D). Accordingly, this requested relief is available to chapter 15 debtors. Further, enforcement of the EJ Plan and the Brazilian Confirmation Order is the means for implementing the EJ Plan and Brazilian Confirmation Order in the United States, which is necessary to consummate the restructuring of the New York law governed Tranche 2 Notes. Therefore, the requested relief is available to the Foreign Representative and the Debtors, as applicable, in these proceedings.

109. Beyond the specific relief listed in subsection 1521, a court may grant additional assistance "consistent with the principles of comity." 11 U.S.C. § 1507(b). In determining whether to provide additional assistance under this title or under other laws of the United States

for business (rather than personal) restructurings,[35] the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure: (a) just treatment of all holders of claims against or interests in the debtor's property; (b) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; (c) prevention of preferential or fraudulent dispositions of property of the debtor; and (d) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title. 11 U.S.C. § 1507(b). Additionally, section 105(a) of the Bankruptcy Code provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

110. As a preliminary matter, courts in this District have routinely analyzed the substantive rules and procedural mechanisms prescribed by the Brazilian Bankruptcy Law and have found that it comports with the United States' fundamental notions of fairness. Accordingly, there are numerous cases in which courts in this district have granted comity and given full force and effect to orders confirming Brazilian restructuring plans in EJ proceedings. *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 41] (granting comity to and giving full force and effect to Brazilian EJ plan); *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15] (same); *In re Odebrecht Óleo E Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (same); *In re Lupatech S.A.*, No. 14-11559 (SMB) (Bankr.

[35] Section 1507(b)(5) of the Bankruptcy Code does not apply here because the Debtors consist of business entities. *See In re Bd. of Dirs. of Telecom Arg. S.A.*, 2006 WL 686867 n.11 (Bankr. S.D.N.Y. Feb. 24, 2006) (the provision of an opportunity for a fresh start factor only applies to individual debtors, not business entities); *In re Culmer*, 25 B.R. 621, 631 N. 4 (Bankr. S.D.N.Y 1982) (the § 304(c)(6) factor "by its terms relates to individual debtors and thus has no application" in the case of a business entity).

S.D.N.Y. June 26, 2014) [ECF No. 26] (same). The Foreign Representative respectfully submits that this Court should follow the litany of precedents respecting Brazilian Bankruptcy Law and EJ proceedings and grant the discretionary relief sought here. For the reasons that follow, the Foreign Representative requests that this Court assist in the implementation of the EJ Plan and the Brazilian Confirmation Order by exercising its discretion under sections 1521(a) and (b), 1507 and 105(a) of the Bankruptcy Code.

1. Assistance with Implementing the EJ Plan

111. Courts in this district have held that Brazilian EJs constitute foreign proceedings. *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 40] (recognizing an extrajudicial reorganization proceeding under the Brazilian Bankruptcy Law); *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15] (same); *In re Odebrecht Óleo E Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (same); *In re Lupatech S.A.*, No. 14-11559 (SMB) (Bankr. S.D.N.Y. June 26, 2014) [ECF No. 26] (same). Therefore, "appropriate relief" under section 1521 or "additional assistance" under section 1507 should include recognizing and enforcing a restructuring plan approved by the Brazilian Court.

112. Recognizing and enforcing the EJ Plan, including the Releases, and Brazilian Confirmation Order in the United States is a necessary and appropriate exercise of comity. As described above, extensive procedural protections in Brazil have assured a rigorous, court-supervised restructuring. *Supra* ¶ 62; *see also* Foreign Law Decl. ¶¶ 34–38. The Foreign Representative now requires additional protection and assistance from this Court to ensure the successful completion of the Debtors' restructuring through the EJ Plan, and thereby effectuate the purpose of chapter 15.

113. Support from this Court is particularly important in the Chapter 15 Cases, as the Overseas Debtors cannot otherwise successfully restructure their New York law-governed debt, and the Debtors' affiliates (*e.g.*, DrillCo and ConvertCo) cannot otherwise issue the New Notes or ConvertCo Notes, and consummate the New Money Investment in accordance with the terms of the EJ Plan. As a practical matter, companies such as the Debtors who have accessed the international and U.S. capital markets and issued debt governed by U.S. law, but are undergoing restructuring proceedings outside the United States, require assistance from U.S. courts. This assistance is necessary to fully consummate their restructurings in order to "facilitat[e] . . . the rescue of financially troubled businesses . . .," which is one of the purposes of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a)(5). Moreover, the EJ Plan itself requires, as a condition to closing the Restructuring, that the "Chapter 15 [Order] shall have been entered by the U.S. Bankruptcy Court and shall not be subject to a stay." EJ Plan at § 9.1.2.

2. Direction and Authority of Directed Parties

114. Pursuant to sections 105(a), 1507(a), and 1521(a) of the Bankruptcy Code, the Foreign Representative seeks additional assistance from the Court in authorizing and directing the Directed Parties to carry out all administrative actions required of them pursuant to the EJ Plan (including, without limitation, the Closing Acts (as defined in the EJ Plan)), Brazilian Confirmation Order, or that are necessary to consummate the terms of the EJ Plan and Brazilian Confirmation Order and the transactions contemplated thereby. This is important because, as described above, (a) the Tranche 2 Notes will be exchanged, depending on each Noteholder's Election, for the Plan Consideration and, for Noteholders so electing or backstopping, on account of their New Money Investment and Backstop Commitment, (b) DrillCo will subrogate into and become the owner of the Tranche 2 Notes pursuant to applicable law, at which time the Tranche 2 Notes will be converted into the Tranche 2 Intercompany Claim, and (c) the Tranche 2 Notes

will be canceled and removed from DTC's and the Trustee's books and records. *See* Foreign Rep. Decl. ¶ 36.

115. These actions will invariably require the assistance of the Directed Parties. The Debtors believe that the Directed Parties may assert that they are not subject to Brazilian Court jurisdiction and, as such, may resist providing this assistance (including, for example, formally cancelling the Tranche 2 Notes and taking any steps to facilitate issuance of the Plan Consideration) without first obtaining an order from a U.S. court directing and authorizing such action. Accordingly, the Foreign Representative seeks assistance from the Court in authorizing and directing the Directed Parties to take all actions that are required of them to consummate the EJ Plan, including prompt assistance to facilitate the following transactions: (a) exchange of the Tranche 2 Notes for Plan Consideration as elected by Noteholders pursuant to the terms of Election, (b) consummation of the New Money Investment, (c) subrogation of DrillCo or any of its affiliates into the Tranche 2 Notes, which shall convert such Tranche 2 Notes into the Tranche 2 Intercompany Claim, (d) cancellation and removal of all remaining positions on account of the Tranche 2 Notes on the books and records of the Trustees, other Existing Agents, and DTC, and (e) assignment of the Indentures, instruments, certificates, and any and all other documents evidencing the Noteholders' claims and rights related thereto (including claims against the Trustees and any other Existing Agent) to DrillCo, in each case, as contemplated by and in accordance with the EJ Plan.

116. By providing this relief, the Court will give clear direction and authority under U.S. law to the Directed Parties to carry out the requirements of the EJ Plan in accordance with Brazilian Bankruptcy Law, other applicable law, and the Brazilian Confirmation Order. This same relief was granted by Courts in this District in previous chapter 15 cases involving

Brazilian Debtors. *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 41] ("The Directed Parties are directed and authorized to take any and all lawful actions necessary to give effect to and implement the EJ Plan and the Brazilian Confirmation Order and the transactions contemplated thereunder, including, without limitation, the consummation of the New Money Investment, cancellation and discharge of the Notes and the Indentures, and the issuance of the Type 1 New Notes and the Type 2 New Notes"); *In re U.S.J. – Açúcar e Álcool S.A.*, No. 22-10320 (DSJ) (Bankr. S.D.N.Y. Apr. 14, 2022) [ECF No. 21] ("The DTC, the Indentures Trustees, their agents, attorneys, successors, and assigns are hereby authorized and directed to take actions necessary to implement the restructuring transactions approved by the Brazilian Confirmation Order . . ."); *In re Oi S.A.*, 587 B.R. 253, 266–67 (Bankr. S.D.N.Y. 2018) (granting relief requested and observing that "the requests for instructions directing the [i]ndenture [t]rustee to take certain actions with respect to securities in accordance with the terms of the Brazilian RJ Plan is also relief of a type available under U.S. law"); *In re OAS S.A. et al.*, No. 15-10937 (SMB) (Bankr. S.D.N.Y. Oct. 5, 2018) [ECF No. 170] (authorizing the Directed Parties to take "any and all actions necessary to . . . give effect to the terms of the Brazilian [r]eorganization [p]lan"); *Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bank. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (authorizing and directing DTC, FINRA and "each of the Trustees to implement and give effect to the Distribution Procedures"); *Aralco S.A. - Indústria e Comércio*, No. 15-10419, (REG) (Bankr. S.D.N.Y. Apr. 24, 2015) [ECF No. 22] ("The DTC and the [i]ndenture [t]rustee, its agents, attorneys, successors and assigns are hereby authorized and directed to take any lawful actions that may be necessary to consummate the transactions contemplated by the Brazilian Reorganization Plan."); *In re Rede Energia S.A.*, 515 B.R. 69, 92 (Bankr. S.D.N.Y. 2014) (authorizing and directing "the [i]ndenture [t]rustee and

DTC to take the necessary actions to carry out the terms of the Brazilian [r]eorganization [p]lan," including the assignment of certain notes to a third party and the making of associated payments to the beneficial noteholders).

3. Releases Supporting the EJ Plan in the United States

117. The Foreign Representative additionally requests that the Court enforce and give full force and effect to the Releases in the territorial jurisdiction of the United States. Releasing the Released Parties (as defined in the Foreign Law Declaration) is necessary to prevent interference with the consummation of the EJ Plan and, in particular, the transfer of the Tranche 2 Notes in exchange for Plan Consideration. This Court has routinely enforced releases similar to the Releases in various foreign proceedings. *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 41] (enforcing third-party releases in connection with recognition and enforcement of Brazilian EJ plan); *In re U.S.J. – Açúcar e Álcool S.A.*, No. 22-10320 (DSJ) (Bankr. S.D.N.Y. Apr. 14, 2022) [ECF No. 21] (same); *In re Markel CATCo Reinsurance Fund Ltd.*, No. 21-11733 (LGB) (Bankr. S.D.N.Y. Mar. 16, 2022) (enforcing third-party releases contained in Bermuda schemes of arrangement); *In re Huachen Energy Co., Ltd.*, No. 22-10005 (LGB) (Bankr. S.D.N.Y. Feb. 2, 2022) (enforcing third-party releases contained in reorganization plan approved in Chinese foreign proceeding); *In re Oi S.A.*, 587 B.R. 253, 266–67 (Bankr. S.D.N.Y. 2018) (enforcing third-party releases contained in Brazilian reorganization plan); In re OAS S.A. et al., No. 15-10937 (SMB) (Bankr. S.D.N.Y. Oct. 5, 2018) [ECF No. 170] (same); *In re Lehman Bros. Int'l (Europe)*, No. 18-11470 (SCC) [ECF No. 15] (Bankr. S.D.N.Y. June 19, 2018) (enforcing UK scheme and order of English court sanctioning third-party releases); *In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bank. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (enforcing third-party release in connection with recognition and enforcement of Brazilian reorganization proceeding).

118. Moreover, the Releases are narrow in scope and are consistent with the types of releases that are generally provided (and approved) in chapter 11 cases. Broadly, the only claims released in connection with the Releases are those related to the exchange and issuance of the ConvertCo Notes, the transfer of the Tranche 2 Notes to DrillCo, the exchange and issuance of the New Notes, delivery of the DrillCo Equity to the Noteholders, acts or omissions of the Trustees or other Existing Agents in relation to any Noteholder instructions issued in connection with the Restructuring, and any other claims with respect to the negotiation or consummation of the Restructuring. *Supra* ¶ 46; Foreign Law Decl. ¶¶ 25–30. Importantly, however, the Releases do not release (a) the Ocyan Group from (i) their obligations to implement and consummate the EJ Plan or (ii) any claims other than claims (including the Tranche 2 Notes and the Intercompany Debts) that are compromised under the EJ Plan or (b) the Released Parties from any claims arising out of fraud, willful misconduct, or other actions in violation of Brazilian Bankruptcy Law. Foreign Law Decl. ¶ 29. Accordingly, the Releases are narrowly tailored to achieve the purpose of the EJ Plan—to facilitate the restructuring of the Debtors' Tranche 2 Notes.

119. The Foreign Representative, therefore, respectfully requests that the Court enforce and give full force and effect to the Releases contained in the EJ Plan. If the Court declines to enforce the Releases, then certain Noteholders or other entities could seek to obtain judgments in the United States against the Debtors or other Released Parties in contravention of the EJ Plan. Such an outcome would result in prejudicial treatment of certain creditors and parties in interest to the detriment of the Debtors' reorganization efforts and would prevent the fair and efficient administration of the Restructuring.

4. Injunctions Supporting the EJ Plan in the United States

120. The Foreign Representative also requests permanent injunctions under section 1521 of the Bankruptcy Code enjoining any entities subject to this Court's jurisdiction from (a)(i)

commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Brazilian EJ Proceeding, EJ Plan, or Brazilian Confirmation Order, including, without limitation, to obtain possession of, exercise control over, or assert claims against the Debtors or their property or (ii) taking any action against the Debtors or their respective property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled, or released under the EJ Plan (including as a result of the laws of Brazil or other applicable jurisdiction, as contemplated under the EJ Plan) or the Brazilian Confirmation Order. The requested injunctive relief will not enjoin actions to enforce the EJ Plan or any rights granted under the New Notes Indenture, ConvertCo Indenture, or any other documents that consummate the EJ Plan. Rather, the requested injunctive relief will help ensure the fair and efficient administration of the EJ Plan and that all of the Debtors' creditors are bound by the terms of the confirmed EJ Plan.

121. Section 1521(e) of the Bankruptcy Code provides that the standards for injunctive relief apply to certain relief available under section 1521. *In re Olinda Star Ltd. (In Provisional Liquidation)*, 614 B.R. 28, 47–48 (Bankr. S.D.N.Y. 2020). Permanent injunctive relief, such as the relief requested herein, is appropriate where the movant can show a likelihood of irreparable harm. This Court has found that a debtor or its estate would suffer irreparable harm where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g.*, *Salen Dry Cargo A.B.*, 825 F.2d at 713–14 ("The equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail."); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2004) ("[I]rreparable harm is present when the failure to enjoin local

actions will disrupt the orderly reconciliation of claims and the fair distribution of assets in a single consolidated forum.") (internal citations omitted); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.").

122. In the context of the enforcement of a foreign confirmation order, irreparable harm exists where the orderly determination of claims against a debtor and the fair distribution of its assets could be disrupted. *See, e.g.*, *Cunard S.S. Co. Ltd. v. Salen Reefer Servs.* AB, 773 F.2d 452, 458 (2d Cir. 1985) ("Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail.") (internal citations omitted); *In re Lloyd*, 2005 Bank. LEXIS 2794 *5 (Bankr. S.D.N.Y. Dec. 7, 2005) ("Unless an injunction is issued, one or more parties may interfere with, or otherwise cause harm to, the administration, implementation and enforcement of the scheme of arrangement, including the satisfaction of the claims of Scheme Creditors, causing immediate and irreparable harm."); *In re MMG LLC*, 256 B.R. at 555 ("As a rule . . . irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.").

123. The Court has authority to grant the relief requested herein in the Chapter 15 Cases. The United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court have all recognized a federal court's authority to grant permanent injunctive relief to enforce foreign plans and discharges. *See, e.g.*, *Can. S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883) (actions brought in the United States by bondholders who did not participate in the Canadian insolvency proceedings of a Canadian railroad could not be

maintained, even though the bonds were payable in New York); *In re Bd. of Dirs. of Telecom Arg., S.A.*, 528 F.3d at 174–76 (affirming bankruptcy court decision granting full force and effect to Argentine plan); *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 40] (granting permanent injunctive relief to enforce Brazilian EJ plan); *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15] (same); *In re Odebrecht Óleo E Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (same); *In re Serviços de Petróleo Constellation S.A.*, No. 18-13952 (MG) (Bankr. S.D.N.Y. Dec. 5, 2019) [ECF No. 192] (granting permanent injunctive relief to enforce Brazilian judicial reorganization (RJ) plan).

124. Here, absent a permanent injunction, certain creditors may later take action against the Debtors or their property in the territorial jurisdiction of the United States in an attempt to circumvent the terms of the EJ Plan. *In re Rede*, 515 B.R. at 94 (explaining that, absent a permanent injunction, creditors would "return to Brazil to attempt to renegotiate and seek a higher distribution, or would commence lawsuits against the Debtor in the United States to recover further"); *Aralco S.A. Indústria e Comércio*, No. 15-10419 (REG) (Bankr. S.D.N.Y. Apr. 21, 2015) [ECF No. 22] (finding that "absent permanent injunctive relief, the Brazilian Bankruptcy Proceedings and the Debtors' efforts to consummate the Brazilian Reorganization Plan could be thwarted by the actions of certain creditors. . . ."). Allowing evasion of the terms of the EJ Plan (including the Releases) or the Brazilian Confirmation Order would force the Debtors to defend against these suits, regardless of their merit, thus depleting their resources, prejudicing their reorganized value, and hindering their ability to access U.S. capital markets. Foreign Rep. Decl. ¶ 60. For these reasons, an injunction would support implementation of the EJ Plan and the Brazilian Confirmation Order and would protect the interests of all creditors in

having their claims valued and paid on a consistent, non-discriminatory basis as determined by the Brazilian Court. *Id.* An injunction will ensure that all parties in interest in the Brazilian EJ Proceeding are bound within the United States by the EJ Plan to which they are presently bound under Brazilian Bankruptcy Law.

C. Recognition of the Brazilian EJ Proceeding and Enforcement of the EJ Plan and the Brazilian Confirmation Order Is Consistent with the Goals of Chapter 15

125. The relief requested herein is founded on the congressional mandate that U.S. courts should cooperate with foreign proceedings and foreign representatives to promote the goals of chapter 15. *See* 11 U.S.C. § 1525(a) ("Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee."). Moreover, the relief requested herein is "appropriate," as that term is used in section 1521 of the Bankruptcy Code, because it is necessary to ensure the success of the Brazilian EJ Proceeding and the EJ Plan.

1. Creditors and Other Parties in Interest Will Be Sufficiently Protected

126. The Court may grant additional relief "only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a) (adopting Article 22 of the Model Law). Although the Bankruptcy Code does not define "sufficient protection," the legislative history indicates that the prohibition applies where "it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors." H.R. REP. No. 109-31, pt. 1, at 116 (2005). As a result, courts have focused on the procedural fairness of the foreign proceeding in order to determine whether creditors are sufficiently protected. *See, e.g., In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010) (examining whether the procedures utilized in the foreign proceeding accorded the American notions of fundamental fairness); *In re Serviços de Petróleo Constellation S.A.*, No.

18-13952 (MG) (Bankr. S.D.N.Y. Jan. 14, 2020), Hr'g Tr. at 103:1-2 [ECF No. 196] (holding that relief to recognize and enforce a Brazilian restructuring plan is available under chapter 15 assuming that "not necessarily exactly our standards, but fairly universal standards of due process" have been complied with).

127. A determination of sufficient protection '"requires a balancing of the respective parties' interests." *In re AJW Offshore, Ltd.*, 488 B.R. 551, 559 (Bankr. E.D.N.Y. 2013) (internal citations omitted); *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 556–58 (E.D. Va. 2010); *CT Inv. Mgmt. Co., LLC v. Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96, 108 (Bankr. S.D.N.Y. 2012); *In re Tri—Cont'l Exch.*, 349 B.R. 627, 637 n.14 (Bankr. E.D. Cal. 2006) ("The idea underlying article 22 is that there should be a balance between relief that may be granted to the foreign representative and the interests of the persons that may be affected by such relief. This balance is essential to achieve the objectives of cross-border insolvency legislation.") (quoting the Model Law); Model Law at ¶ 161. Section 1522 of the Bankruptcy Code "gives the bankruptcy court broad latitude to mold relief to meet specific circumstances." *In re Int'l Banking Corp. B.S.C.*, 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) (internal citations omitted).

128. Here, the Debtors' creditors are "sufficiently protected" by the treatment afforded to them under the EJ Plan and the process by which the EJ Plan was approved. *See generally* Foreign Law Decl. The U.S. creditors, for example, are not being subjected to undue inconvenience or prejudice. Rather, the EJ Plan treats all similarly situated creditors equally and distributes consideration under the EJ Plan in a manner substantially comparable to what might occur under U.S. law. *Id.* at ¶ 34, 45–49. The relief requested herein "would [also] assist in the efficient administration of this cross-border insolvency proceeding, and it would not harm the interests of the debtors or their creditors." *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621

(Bankr. D. Del. 2010). That certain creditors "may be denied an advantage over the debtor's other . . . creditors is not a valid reason to deny relief to the foreign representative." *In re Atlas Shipping A.S.*, 404 B.R. at 742.

129. The Debtors have successfully negotiated a consensual resolution with their creditors to adjust the terms of their funded indebtedness to the current financial status of their entities' business activities and capabilities. This resolution was approved by the requisite majority of creditors and was confirmed by the Brazilian Court. *Supra* ¶ 31. Additionally, throughout the restructuring process, all creditors and parties in interest have been kept abreast of the Brazilian EJ Proceeding, and thereby have had the opportunity to adhere to the EJ Plan, object, appeal, present evidence, and otherwise fully participate in the Brazilian EJ Proceeding in a manner that is consistent with U.S. standards of due process. *Supra* ¶¶ 26–31; Foreign Law Decl. ¶¶ 21–24. Indeed, as set forth above, creditors were provided robust notice of the Brazilian EJ Proceeding, including, among other things, through the EJ Press Release, Public Notice, Election Notice, and Election Launch Press Release. *Id.*; *supra* ¶¶ 26–31.

130. The Brazilian EJ Proceeding provided affected creditors thirty (30) days to object to the terms of the EJ Plan, including the Releases set forth therein. *Supra.* at ¶ 29. That notice period is longer than the minimum 21-day objection period that would be provided under law in this District to object to confirmation of a U.S. chapter 11 plan. Bankruptcy Rule 2002(b) (requiring 28 days' notice of chapter 11 plan confirmation hearing); S.D.N.Y. Local Bankruptcy Rule 3020-1 (requiring objection to chapter 11 plan confirmation to be filed at least seven days before a confirmation hearing). Despite this robust notice, no party has filed any objection to the Brazilian EJ Proceeding or the EJ Plan. *Supra* at ¶ 31.

131. The results of the Election further bolster the procedural fairness of the Brazilian EJ Proceeding and EJ Plan. A total of approximately 94% and 91% of the amount of the 2021 Tranche 2 Notes and 2022 Tranche 2 Notes, respectively, elected to make the New Money Investment. *Supra* at ¶ 43. Moreover, approximately 97% of the 2021 Tranche 2 Notes and 94% of the 2022 Tranche 2 Notes participated in the Election. *Id.*

2. The Relief Requested Is Not Manifestly Contrary to the Public Policy of the United States

132. Although the Court may deny a request for any chapter 15 relief that would be "manifestly contrary to the public policy of the United States" (11 U.S.C. § 1506), this public policy exception is narrowly construed. *See In re ABC Learning Ctrs.*, 728 F.3d at 309 (quoting H.R. Rep. No. 109-31(1) at 109 (2005)); *In re Sino-Forest Corp.*, 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013); *In re Toft*, 453 B.R. 186, 195 (Bankr. S.D.N.Y. 2011). Importantly, the result achieved in a foreign proceeding does not have to be identical to that in the United States. Rather, "[t]he key determination . . . is whether the procedures used [in the foreign proceeding] meet our fundamental standards of fairness." *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 697; *see also In re Bd. of Dirs. of Telecom Arg. S.A.*, 2006 WL 686867, at *25 (Bankr. S.D.N.Y. 2006) ("Comity does not require that the foreign law be a carbon copy of our law; rather, [it] must not be repugnant to American laws and policies.") (internal citations omitted).

133. Furthermore, chapter 15 was drafted to "incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency." 11 U.S.C. § 1501(a). Section 1501(a) provides that chapter 15 is intended to, among other things, (a) facilitate the cooperation between "courts and other competent authorities of foreign countries involved in cross-border insolvency cases;" (b) undergird the "fair and efficient administration of cross-border insolvencies that protects the interests of all

creditors, and other interested entities, including the debtor;" and (c) "protect[] and maximiz[e] [] the value of the debtor's assets." *Id.*

134. Here, the Brazilian EJ Proceeding and EJ Plan are consistent with the public policy of the United States. As further explained in the Foreign Law Declaration, EJ proceedings under Brazilian Bankruptcy Law provide robust procedural protections to creditors, regardless of their location, including opportunities to object and adhere to an EJ plan. Foreign Law Decl. ¶ 34, 39. Thus, it is no surprise that Courts in this District have repeatedly recognized Brazilian restructuring proceedings by finding that "Brazilian bankruptcy law meets our fundamental standards of fairness and accords with the course of civilized jurisprudence." *In re Rede Energia S.A.*, 515 B.R. at 98; s*ee, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 41]; *In re Mina Tucano Ltda.*, No. 22-11198 (LGB) (Bankr. S.D.N.Y. Oct. 12, 2022) [ECF No. 26]; *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15]; *In re Odebrecht Óleo E Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28]; *In re Lupatech S.A.*, No. 14-11559 (SMB) (Bankr. S.D.N.Y. June 26, 2014) [ECF No. 26]; *In re Rede Energia S.A.*, 515 B.R. at 98; *OAS S.A.*, 533 B.R. at 103 (Bankr. S.D.N.Y. 2015) (noting that "Brazil has a comprehensive bankruptcy law that in many ways mirrors our own" and agreeing with the *Rede* decision that Brazilian bankruptcy law is not contrary to U.S. public policy); *Oi S.A.*, No. 16-11791 (SHL) (Bankr. S.D.N.Y. June 15, 2018) [ECF No. 277] (finding that a Brazilian restructuring plan, and the process for solicitation of votes on, and confirmation of, the plan, "in each case before the Brazilian RJ Court, provided creditors and parties in interest with appropriate due process and were not manifestly contrary to U.S. public policy"); *In re Serviços de Petróleo Constellation S.A.*, No. 18-13952 (MG), Hr'g Tr. at 105:16-19 (Bankr.

S.D.N.Y. May 9, 2019) [ECF No. 196] (observing that it "is clearly well-established in U.S. law under Chapter 15 . . . that sections 1507 and 1521 provide this court with authority to recognize and enforce a Brazilian RJ plan.").

135. The relief obtained by the Debtors under the Brazilian Bankruptcy Law and now requested pursuant to this Motion is analogous to the relief afforded to debtors under chapter 11 of the Bankruptcy Code. Confirmed chapter 11 plans, for example, routinely permanently enjoin claims against a debtor and its successor(s) that have been released and discharged under a restructuring plan. Moreover, U.S. courts regularly direct parties to take necessary actions to carry out transactions contemplated by the plan on behalf of the estate. Thus, the requested relief that the Directed Parties be authorized and directed to take any actions necessary for the consummation of the EJ Plan would be available in chapter 11 cases and, therefore, should be granted here. *See In re Rede Energia S.A.*, 515 B.R. at 93 (finding that injunctions emanating from chapter 11 plans and the issuance of instructions to indenture trustees and the DTC to take actions necessary to effectuate such plans to be among the relief granted in chapter 11 and, accordingly, available to foreign representatives in chapter 15 under section 1521).

136. Furthermore, enforcing the Releases in the EJ Plan is not contrary to public policy. *See In re Sino-Forest Corp.*, 501 B.R. at 665 (holding that, in the Second Circuit, "where the third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy"). Indeed, no court has found that the grant of relief and additional assistance to enforce and give effect to third-party releases approved in a

foreign proceeding is manifestly contrary to the public policy of the United States.[36] In fact, this Court has repeatedly recognized and enforced foreign plans that contain third-party releases, which is predicated on a finding that the same are not manifestly contrary to public policy. *See, e.g.*, *In re MIE Holdings Corp.*, Case No. 22-10216 (JLG) (Bankr. S.D.N.Y. Apr. 21, 2022) [ECF No. 14] (enforcing debtor and third-party releases contained in a foreign restructuring plan); *In re Huachen Energy Co., Ltd.*, Case No. 22-1005 (LGB) (Bankr. S.D.N.Y. Feb. 2, 2022) [ECF No. 19] (same); *In re PT Pan Brothers Tbk*, Case No. 22-10136 (MG) (Bankr. S.D.N.Y. March 8, 2022) [ECF No. 12] (same); *In re Atlas Financial Holdings, Inc.*, Case No. 22-10260 (LGB) (Bankr. S.D.N.Y. March 30, 2022) [ECF No. 18] (same); *In re Hidili Industry International Development Limited*, Case No. 22-10736 (DSJ) (Bankr. S.D.N.Y. July 12, 2022) [ECF No. 16] (same); *In re E-House (China) Enterprise Holdings Limited*, Case No. 22-11326 (JPM) (Bankr. S.D.N.Y. Nov. 15, 2022) [ECF No. 22] (same).

137. In addition, as with proceedings under chapter 11, the Brazilian EJ Proceeding provides for a centralized process to assert and resolve claims against the estate in one tribunal, the Brazilian Court, and to provide distributions to creditors in order of priority. Foreign Law Decl. at ¶ 8. Thus, as required by the Model Law (and as incorporated in chapter 15), granting the relief requested here would foster cooperation between courts in Brazil and the United States. For example, by granting the relief requested here, including giving effect to the Releases, this Court would be assisting the Brazilian Court in the orderly restructuring of the Tranche 2 Notes by enjoining creditors from commencing actions against the Debtors or their assets in the United

[36] *Cf. In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 890 (Bankr. S.D.N.Y. 2021) (granting recognition and denying relief to enforce third-party releases not expressly set forth in Indonesian PKPU plan, on grounds other than public policy exception of section 1506).

States and by giving the Directed Parties the power that they believe they need to carry out their duties.

138. For these reasons, the Brazilian EJ Proceeding is patently fair, and it and the EJ Plan (including the Releases) comport with the United States' standards of fundamental fairness and with United States public policy. Accordingly, the relief requested here should be granted.

3. Granting the Relief Requested Meets the Traditional Standards of "Comity" Under Section 1507(b)

139. The Foreign Representative submits that granting the above-referenced relief further meets the standards of comity set forth in section 1507(b) of the Bankruptcy Code.

140. The first factor under section 1507(b) is whether the additional assistance contemplated will reasonably assure "just treatment of all holders of claims against or interests in the debtor's property." 11 U.S.C. § 1507(b)(1). Under former section 304(c) jurisprudence, courts uniformly held that this requirement is satisfied where the foreign insolvency law provides a comprehensive procedure for the orderly resolution of claims and the equitable distribution of assets among all of the estate's creditors in one proceeding. *See, e.g.*, *In re Bd. of Dirs. of Telecom Arg., S.A.*, 528 F.3d 162, 170 (2d. Cir. 2008) ("The 'just treatment' factor is satisfied upon a showing that the applicable law 'provides for a comprehensive procedure for the orderly and equitable distribution of [the debtor]'s assets among all of its creditors.'") (internal citations omitted); *In re Culmer*, 25 B.R. 621, 629 (Bankr. S.D.N.Y. 1982).

141. As described in greater detail in the Foreign Law Declaration, the Brazilian Bankruptcy Law provides for a comprehensive procedure for the orderly and fair resolution of claims and the equitable distribution of assets among all of the estate's creditors subject to the extrajudicial restructuring, in a single proceeding. Foreign Law Decl. ¶ 8, 46–49. An extrajudicial restructuring under chapter VI of the Brazilian Bankruptcy Law is analogous to a

prepackaged plan of reorganization in the United States, or a scheme of arrangement in certain other jurisdictions. *Id.* at ¶ 8. In an extrajudicial restructuring, a debtor may negotiate a plan and then agree to such a final form of plan with its creditors, such as the EJ Plan, and then submit the plan to a Brazilian court for confirmation. *Id.* Pursuant to Article 163 of the Brazilian Bankruptcy Law, any claims against a debtor (other than labor claims, tax claims, and certain other claims that are not relevant here) that exist on the date of the EJ filing, whether matured or unmatured, may be impaired by an EJ plan. *Id.* at ¶ 21. An EJ plan may impair multiple classes of claims or be limited to a single class of similarly situated claims against a debtor. *Id.* The debtor may classify claims in a single class if those claims are of the same nature and subject to similar payment terms and conditions (such as the Tranche 2 Notes, which are USD-denominated obligations of the Debtors owed in connection with the issuance of securities in the international capital markets); provided, however, that as a general rule, if claims are classified together, then such claims being impaired by the EJ plan must receive similar treatment under the EJ plan. *Id.* Here, the EJ Plan provides for the same treatment for each Noteholder as other Noteholders pertaining to the same group of claims, and gives each Noteholder the same opportunity (through the Election) to participate in the New Money Investment.

142. The second factor requires "protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding." 11 U.S.C. § 1507(b)(2). This factor is satisfied where creditors are given adequate notice of timing and procedures for filing claims, and such procedures do not create any additional burdens for a foreign creditor to file a claim. *See, e.g.*, *In re Treco*, 240 F.3d at 158; *In re Petition of Hourani*, 180 B.R. 58, 68 (Bankr. S.D.N.Y. 1995).

143. As mentioned above, all of the creditors subject to the Brazilian EJ Proceeding, regardless of where located, were treated equally and were given ample and proper notice of the Brazilian EJ Proceeding and the Election. As fully explained in the Foreign Law Declaration, Brazilian Bankruptcy Law, as a general matter, does not differentiate between foreign and local creditors, meaning that foreign creditors are subject to proceedings under Brazilian Bankruptcy Law on the same terms as local creditors and have the same rights and protections, including the right to notice, object, and be heard. Foreign Law Decl. ¶ 41. Foreign creditors are entitled to be listed on the same list of creditors and are bound by the same procedures and deadlines as local creditors. *Id.* In fact, foreign creditors with claims denominated in currencies other than Brazilian *reais* (such as the U.S. dollar claims compromised under the EJ Plan) are entitled to an additional protection—an EJ plan cannot convert their claims from a foreign currency to Brazilian reais without specific consent of the relevant creditor. *Id.* That is an important protection for foreign creditors, as they do not become subject to currency exchange risk while the case is pending. *Id.* Accordingly, United States creditors or other foreign creditors do not suffer any significant burdens in the Brazilian EJ Proceeding that are inconsistent with those placed upon Brazilian creditors. *Id.* In short, the Brazilian EJ Proceeding did not prejudice foreign creditors as they had adequate notice of the timing and procedures for participating in the Brazilian EJ Proceeding and objecting to the EJ Plan, and even received special protection against the conversion of their claims into Brazilian reais, avoiding currency exchange risks.

144. The third factor requires that the "additional assistance" being considered will reasonably assure prevention of preferential or fraudulent dispositions of property of the debtor. 11 U.S.C. § 1507(b)(3). Under the Brazilian Bankruptcy Law, as further detailed in paragraph 43 of the Foreign Law Declaration, any creditor, the Brazilian Public Attorney's Office, or the

judicial administrator appointed by the court within the judicial reorganization or bankruptcy liquidation proceedings, may bring actions to avoid transfers made to third parties by the debtor with the intent of harming creditors or damaging the debtor's estate if such debtor is declared bankrupt and goes into liquidation. This factor is satisfied as Brazilian Bankruptcy Law provides numerous procedural and other safeguards to prevent preferential or fraudulent dispositions of the Debtors' property and none have been alleged in the Brazilian EJ Proceeding.

145. The fourth factor requires that the distribution of the debtor's property substantially accords with the order of distribution available under the Bankruptcy Code. *See In re Gee*, 53 B.R. 891, 904 (S.D.N.Y. 1985); *see also Haarhuis v. Kunnan Enters., Ltd.*, 177 F.3d 1007 (D.C. Cir. 1999) (The Taiwanese distribution system was substantially in accordance with U.S. law because priority was afforded to certain classes of claims as under the Bankruptcy Code). Simply put, that section "only requires that the foreign distribution scheme be 'substantially in accordance' with United States bankruptcy law; it does not have to mirror the United States distribution rules." *In re Ionica PLC*, 241 B.R. 829, 836 (Bankr. S.D.N.Y. 1999) (internal citations omitted).

146. Creditor priority in a repayment waterfall served as the legal backdrop for negotiations of the restructuring of the Tranche 2 Notes, rather than a governing set of priorities enforced under the EJ Plan. Notwithstanding this, as a legal matter and as explained more fully in the Foreign Law Declaration, the distribution scheme under the Brazilian Bankruptcy Law that applies in connection with a bankruptcy or liquidation substantially accords with the scheme under the Bankruptcy Code, satisfying section 1507(b)(4). Foreign Law Decl. Section V. Importantly, the distribution scheme under the Brazilian Bankruptcy Law grants priority to certain administrative claims and ranks secured claims senior to unsecured claims. *Id.*

147. In an EJ proceeding (such as the Brazilian EJ Proceeding), creditors' impaired claims under the plan (and only such claims) are paid according to the provisions of a confirmed EJ plan, and other claims are generally not affected by the EJ plan. *Id.* at ¶ 48. However, an EJ plan (a) shall not provide for early repayment of claims subject to the EJ Plan and cannot provide treatment that harms creditors not impaired by the EJ Plan; (b) shall not suppress the exchange rate variation in the calculation of claims in foreign currency without the express consent of the relevant creditor; (c) shall not provide for the sale of any asset given as collateral without the consent of the applicable secured creditors (as prescribed by the relevant financing and/or collateral documentation); and (d) all similarly situated creditors within the same class must be treated equally (subject to narrow exceptions). *Id.*

148. One of the exceptions under Brazilian Bankruptcy Law to the equal treatment of similarly situated creditors within the same class applies to so-called "supporting creditors" who shoulder additional burdens to assist the debtor in its restructuring such as by providing additional credit, capital investment or critical supplies, thereby increasing their exposure to the debtor. *Id.* ¶ 49. This different treatment of "supporting creditors" is broadly consistent with the priority provided to providers of credit or goods to a U.S. debtor during its chapter 11 case. *See generally* 11 U.S.C. § 503(b); 507(a)(2). The treatment of the Noteholders under the EJ Plan—including provision of Post-Filing Interest Cash only to Noteholders that elected to participate in the New Money Investment—is consistent with Brazilian Bankruptcy Law and the Bankruptcy Code. *Id.* As discussed above, all Noteholders were provided with the opportunity to make an election and thereby select their treatment under the EJ Plan, including whether to provide a New Money Investment, and approximately 94% of the amount of 2021 Tranche 2 Notes and 91% of the 2022 Tranche 2 Notes made such New Money Investment election.

149. Accordingly, the distribution scheme under the EJ Plan and under Brazilian Bankruptcy Law generally, substantially accords with the distribution scheme under the Bankruptcy Code. *In re Rede Energia S.A.*, 515 B.R. at 103–105 (finding that the Brazilian Bankruptcy Law's distribution scheme substantially accords with the distribution scheme prescribed under the Bankruptcy Code). Therefore, the fourth factor of section 1507(b) is satisfied.

150. Finally, section 1507 of the Bankruptcy Code generally requires that any determination of a request for assistance under chapter 15 be "consistent with principles of comity . . . ." 11 U.S.C. § 1507(b). As the House Judiciary Committee noted in its report, "comity is raised to the introductory language to make clear that it is the central concept to be addressed." H.R. REP. No. 109–31, pt. 1, at 109 (2005); U.S. Code Cong. & Admin. News 2005, 88, 172. See also 11 U.S.C. § 1509(b)(3) (once recognition of a foreign proceeding is granted, "a court in the United States shall grant comity or cooperation to the foreign representative."); *In re Atlas Shipping*, 404 B.R. at 742 (granting comity to orders in Danish proceeding).

151. As discussed above, principles of comity support the grant of the relief requested herein, including enforcement of the Releases. *See Metcalfe*, 421 B.R. at 696 (concluding that "principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter 11 case."). Federal courts generally extend comity "whenever the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy." *See Salen Dry Cargo A.B.*, 825 F.2d 709, 713 (2d. Cir. 1987) (internal citations omitted). As noted above, "American courts have long recognized the need to

extend comity to foreign bankruptcy proceedings" because "[t]he equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail." *Salen Dry Cargo A.B.*, 825 F.2d at 713–14. Other courts have similarly underscored the importance of extending comity to foreign bankruptcy proceedings. *See, e.g.*, *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d. Cir. 1999); *In re Maxwell Commc'n Corp. plc by Homan*, 93 F.3d 1036, 1048 (2d Cir. 1996); *Salen Reefer Servs. AB*, 773 F.2d at 458; *OUI Fin. LLC v. Dellar*, No. 12 Civ. 7744 (RA), 2013 WL 5568732, at *4 (S.D.N.Y 2013) (comity under New York law should normally be extended to foreign restructuring proceedings if the foreign court is of competent jurisdiction, and the proceedings are procedurally fair and do not contravene public policy).

152. Indeed, comity should be withheld only when the recognition of foreign proceedings would be adverse to the public policy interests of the United States. *See Salen Reefer Servs. AB*, 773 F.2d at 457. American courts have consistently recognized the interests of foreign countries in winding up the affairs of businesses in their own jurisdictions. *See Salen Reefer Servs. AB*, 773 F.2d at 458; *In re Gee*, 53 B.R. at 901. As discussed above, because the Brazilian EJ Proceeding and EJ Plan (including the Releases) are not contrary or prejudicial to the interests of creditors in the United States, the doctrine of comity supports the granting of permanent relief enforcing the EJ Plan and the Brazilian Confirmation Order under sections 105(a), 1507 and 1521 of the Bankruptcy Code. *See In Rede Energia S.A.*, 515 B.R. at 104–07 (refusing to deny comity merely because the Brazilian Bankruptcy Law is not identical to U.S. law and finding that the application of the Brazilian Bankruptcy Law in the Brazilian Court

"progressed according to the course of a civilized jurisprudence," that the procedures "meet our fundamental standards of fairness" and that therefore no violation of U.S. public policy occurred).

D. Waiver of the Stay is Appropriate to Ensure Expeditious Implementation of the EJ Plan

153. The Foreign Representative respectfully requests that, to the extent applicable, the Court cause the Proposed Order to become effective immediately upon entry, notwithstanding the 14-day stay of effectiveness of the order imposed by operation of the Bankruptcy Code or the Bankruptcy Rules, including Bankruptcy Rules 1018, 3020(e), 6004(h), 7062 and 9014. Such a waiver is appropriate in these circumstances to allow the Debtors to proceed immediately with consummation of the EJ Plan and execution of the Restructuring. Foreign Rep. Decl. ¶ 63. As noted above, the commencement of the New Drilling Contracts is contingent upon consummation of the Restructuring, as the proceeds of the New Money Investment are necessary to maintain and modify the Drilling Units to fulfill the Ocyan Group's obligations under the New Drilling Contracts. Therefore, in order to mitigate the Debtors' ongoing liquidity concerns and perform under the New Drilling Contracts, it is important that DrillCo receive the proceeds of the New Money Investment as soon as possible and by mid-May, 2023. This would provide DrillCo with the funding necessary to maintain and modify the Drilling Units to fulfill DrillCo's obligations under the New Drilling Contracts. In addition, to comply with the existing Drilling Unit Contracts and continue operations, three of the Drilling Units are scheduled for mandatory upgrades this year, and the reorganized Drilling Business will incur CapEx in connection with these upgrades beginning in mid-May. *Id.* For these reasons and in light of the high degree of creditor support for this uncontested EJ Plan, granting a waiver of the 14-day stay of effectiveness period is appropriate so that the Restructuring can be implemented as soon as possible.

154. Courts in this District routinely provide full or partial waivers of the 14-day stay of effectiveness period in chapter 15 cases, including with respect to orders granting comity and giving full force and effect to orders confirming Brazilian restructuring plans in EJ proceedings. *See, e.g.*, *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 41]; *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15]; *In re Odebrecht Óleo E Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28]; *In re Lupatech S.A.*, No. 14-11559 (SMB) (Bankr. S.D.N.Y. June 26, 2014) [ECF No. 26].

NOTICE

155. In accordance with Rule 2002(q) of the Bankruptcy Rules, the Foreign Representative will provide notice of this Motion to (a) the Debtors; (b) the Office of the United States Trustee for Region 2 (the "U.S. Trustee"); and (c) the Notice Parties (as defined in the *Motion Pursuant to Fed. R. Bankr. P. 2002 and 9007 Requesting Entry of Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), filed contemporaneously herewith. Draft copies of this Motion were also shared with counsel to the Ad Hoc Group and the U.S. Trustee prior to filing this Motion. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

156. No previous request for the relief sought herein has been made by the Foreign Representative to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Foreign Representative respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: April 11, 2023
New York, New York

/s/ Eli J. Vonnegut

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Counsel to the Foreign Representative

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: **ODN I Perfurações Ltda., *et al.*,**[1] **Debtors in a Foreign Proceeding**	**Chapter 15** **Case No. 23-10557 (DSJ)** **(Jointly Administered)**

ORDER GRANTING (I) RECOGNITION OF FOREIGN PROCEEDING, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) FULL FORCE AND EFFECT IN THE UNITED STATES TO THE BRAZILIAN EJ PLAN AND CONFIRMATION ORDER, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon the *Motion for (I) Recognition of Foreign Proceeding, (II) Recognition of Foreign Representative, (III) Recognition of Brazilian Confirmation Order and Related EJ Plan, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Motion")[2] of Rogerio Luis Murat Ibrahim (the "Foreign Representative"), the authorized foreign representative in respect of the *recuperação extrajudicial* proceeding (the "Brazilian EJ Proceeding") of ODN I Perfurações and each of its affiliated debtors (collectively, the "Debtors") in the 4th Business Court of the Judicial District of Rio de Janeiro, Brazil (the "Brazilian Court") pursuant to Brazilian Federal Law No. 11,101 of February 9, 2005 (as amended from time to time, the "Brazilian Bankruptcy Law"), for entry of a final order (this "Order"), pursuant to sections 105(a), 1507, 1509(b), 1515, 1517, 1520, 1521, and 1525(a) of title 11 of the United States Code, 11 U.S.C. sections 101,

[1] The debtors in these chapter 15 cases (the "Chapter 15 Cases"), along with each debtor's tax identification or corporate registry number, are: ODN I Perfurações Ltda. (CNPJ/ME No. 11.165.868/0001-68) ("ODN I Perfurações"), Odebrecht Drilling Norbe VIII/IX Ltd. (No. 245888) ("Norbe VIII/IX"), Odebrecht Drilling Norbe Eight GmbH (No. FN 34216i) ("Norbe Eight"), Odebrecht Drilling Norbe Nine GmbH (No. FN 342214g) ("Norbe Nine"), Odebrecht Offshore Drilling Finance Limited (No. 277889) ("OODFL"), ODN I GmbH (No. FN 321008x) ("ODN I"), Odebrecht Drilling Norbe Six GmbH (No. FN 347728s) ("Norbe Six"), and ODN Tay IV GmbH (No. FN 353359x) ("Tay IV").

[2] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

et seq. (the "Bankruptcy Code") (a) granting the Motion and recognizing the Brazilian EJ Proceeding as a "foreign main proceeding" (as defined in section 1502(4) of the Bankruptcy Code) of the Debtors pursuant to section 1517 of the Bankruptcy Code, all relief included therewith as provided in section 1520 of the Bankruptcy Code, and related relief under section 1521(a); (b) finding that the Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and that the Foreign Representative is authorized to act on behalf of the Debtors for purposes of the Chapter 15 Cases; (c) entrusting the Foreign Representative with the power to administer, realize, and distribute all assets of the Debtors within the territorial jurisdiction of the United States; (d) recognizing and enforcing the EJ Plan in the United States and giving full force and effect, and granting comity in the United States, to the Brazilian Confirmation Order, including, without limitation, giving effect to the Releases set forth in the EJ Plan and to allow the Foreign Representative, the Debtors and their respective expressly authorized representatives and agents to take actions necessary to consummate the EJ Plan and transactions contemplated thereby; (e) permanently enjoining all entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative, the Debtors and their respective expressly authorized representatives and agents from (i) commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Brazilian EJ Proceeding, EJ Plan, or Brazilian Confirmation Order including, without limitation, to obtain possession of, exercise control over, or assert claims against the Debtors or their property or (ii) taking any action against the Debtors or their respective property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are assigned, subrogated, discharged, extinguished, novated,

canceled or released under the EJ Plan (including as a result of the laws of Brazil or other applicable jurisdiction, as contemplated under the EJ Plan) or the Brazilian Confirmation Order; (f) authorizing and directing the Directed Parties and any successor trustees to take any and all actions necessary to give effect to the terms of the EJ Plan and transactions contemplated thereby; (g) exculpating and releasing the Directed Parties from any liability for any action or inaction taken in furtherance of and/or in accordance with this Order or the EJ Plan, except for any liability arising from any action or inaction constituting gross negligence, actual fraud, or willful misconduct as determined by the Court; (h) waiving the 14-day stay on effectiveness of this Order; and (i) granting such other and further relief as the Court deems just and proper; and the Court having determined that the legal and factual bases set forth in the Motion, the Foreign Representative Declaration, Foreign Law Declaration and all other pleadings and papers in these cases establishing just cause to grant the relief set forth herein and that such relief is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court

for the Southern District of New York. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P) and this Court has the statutory and constitutional authority to issue a final ruling with respect to this matter. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative, in his capacity as the Foreign Representative of the Debtors, has standing to make the Motion.

D. The Debtors have property and property rights within this district, and therefore, each of the Debtors is eligible to be a debtor in a chapter 15 case pursuant to sections 109 and 1501 of the Bankruptcy Code.

E. The Foreign Representative is the duly appointed "foreign representative" of each of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

F. The Chapter 15 Cases were properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code, and the Foreign Representative has complied with section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002 (except to the extent compliance with Bankruptcy Rule 1007(a)(4) has previously been waived by this Court).

G. Due and proper notice of the Motion and Hearing have been provided in accordance with the *Order Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9007 Scheduling Hearing and Specifying Form and Manner of Service and Notice* [ECF No. ·] (the "Scheduling Order") and in compliance with the requirements of Bankruptcy Rule 2002(q), and no other or further notice need be provided.

H. The Brazilian EJ Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code.

I. The Brazilian EJ Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

J. Brazil is the center of main interests of the Debtors, and accordingly, the Brazilian EJ Proceeding is a "foreign main proceeding" within the meaning of section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

K. The Foreign Representative and the Debtors, as applicable, are entitled to the relief available pursuant to section 1520 of the Bankruptcy Code and to additional assistance and discretionary relief (including recognition and enforcement of the EJ Plan, the Releases contained therein, and the Brazilian EJ Confirmation Order) pursuant to sections 1507 and 1521(a) of the Bankruptcy Code, to the extent set forth in this Order and subject to the limitations set forth in this Order.

L. The Foreign Representative and the Debtors, as applicable, are entitled to the Court's cooperation under section 1525(a) of the Bankruptcy Code in implementing the EJ Plan in the form of relief granted by this Order on the terms provided herein. The terms of the EJ Plan before the Brazilian Court provided creditors and parties in interest with appropriate due process and are not manifestly contrary to U.S. public policy.

M. The relief granted hereby is necessary and appropriate to effectuate the purposes and objectives of Chapter 15 of the Bankruptcy Code and to protect the Debtors and the interests of their creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code.

N. The relief granted hereby (a) is essential to the success of the Brazilian EJ Proceeding and EJ Plan; (b) is an integral element of the Brazilian EJ Proceeding and the EJ

Plan, and is integral to their effectuation; and (c) confers material benefits on and is in the best interests of the Debtors, their creditors and parties in interest, including, without limitation, the Noteholders.

O. Absent the relief granted hereby, the Brazilian EJ Proceeding and the Debtors' efforts to consummate the EJ Plan could be impeded by the actions of certain creditors and other persons, a result that would be contrary to the purposes of Chapter 15 of the Bankruptcy Code as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. If taken, such actions could threaten, frustrate, delay, and ultimately jeopardize the Brazilian EJ Proceeding and implementation of the EJ Plan, and, as a result, the Debtors, their creditors, and such other parties in interest would suffer irreparable harm for which there is no adequate remedy at law.

P. Each injunction contained in this Order (a) is within the Court's jurisdiction; (b) is necessary and appropriate to the success of the Brazilian EJ Proceeding; (c) confers material benefits on, and is in the best interests of the Debtors and their creditors; and (d) is important to the overall objectives of the Debtors' restructuring.

Q. Specifically, the injunctive relief set forth in this Order is appropriate and necessary to prevent the risk that the Brazilian EJ Proceeding may be thwarted by the actions of particular creditors, a result inimical to the purposes of Chapter 15 of the Bankruptcy Code as set forth in section 1501(a) of the Bankruptcy Code. Such actions could put in peril the Debtors' ability to successfully restructure.

R. The relief granted herein will not cause undue hardship or inconvenience to any party in interest, and to the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, Debtors, their estates, and their creditors.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The petitions for recognition and other relief requested in the Motion are hereby GRANTED, as set forth in this Order.

2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the hearing on the Motion, if any, or by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.

3. The Foreign Representative is the duly appointed foreign representative of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and is authorized to act on behalf of the Debtors in the Chapter 15 Cases.

4. The Brazilian EJ Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

5. All relief and protection afforded to a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code is hereby granted to the Brazilian EJ Proceeding, the Debtors, and the Debtors' assets located within the territorial jurisdiction of the United States, as applicable, including the application of section 362 of the Bankruptcy Code, which bars the commencement or continuation of actions against the Debtors and/or property of the Debtors located within the territorial jurisdiction of the United States. The Debtors and their respective successors, agents, representatives, advisors, and counsel are entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

6. The Brazilian Confirmation Order, the EJ Plan (including the Releases), any amendments, modifications, and all schedules, exhibits and other attachments to the EJ Plan, and the Existing Agents Supplemental Indemnification, in each case subject to all terms, conditions,

and limitations set forth therein, are hereby recognized, granted comity and given full force and effect within the territorial jurisdiction of the United States and for purposes of U.S. law with respect to each of the Debtors, and each is binding on all creditors of the Debtors, including all Noteholders, the Directed Parties and any of their respective successors and assigns, subject to the terms of this Order.

7. Except as provided by or as may be necessary to enforce the terms of the EJ Plan, the Brazilian Confirmation Order, the Existing Agents Supplemental Indemnification or this Order, all entities (as such term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative, the Debtors and their respective expressly authorized representatives and agents are hereby permanently enjoined and restrained from:

(a) execution against any of the Debtors' assets in contravention of the terms of the EJ Plan, the Brazilian Confirmation Order, or this Order;

(b) the direct or indirect commencement or continuation, including the issuance or employment of process or discovery, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim (as such term is defined in section 101(5) of the Bankruptcy Code), which in either case in any way relates to, or would interfere with, the administration of the Debtors' estates in the Brazilian EJ Proceeding or the solicitation, implementation, or consummation of any transaction contemplated by the EJ Plan;

(c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, setoff, or other claim against the Debtors or any of their property with respect to any debt that is assigned, subrogated, discharged, extinguished, novated,

canceled, released or otherwise being restructured pursuant to the EJ Plan, including, for the avoidance of doubt and without limitation, the Tranche 2 Notes;

(d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as such term is defined in section 101(15) of the Bankruptcy Code) other than by the Foreign Representative and his authorized representatives and agents or in any way attempting to obtain possession or control over any property of the Debtors, in each case, other than in a manner consistent with and not in contravention of the terms of the EJ Plan, the Brazilian Confirmation Order, or this Order;

(e) to the extent they have not been stayed pursuant to section 1520(a) and 362 of the Bankruptcy Code, asserting any claims, commencing, or continuing any action or proceeding (including, without limitation, bringing suit in any court, arbitration, mediation, or any judicial or quasi-judicial, administrative or regulatory action, proceeding, or process whatsoever), whether directly or by way of counterclaim (and from seeking discovery of any nature related thereto) concerning or otherwise relating to (i) the Debtors' property, assets, affairs, rights, obligations, or liabilities or (ii) any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled or released under the EJ Plan (including the Releases), the Brazilian Confirmation Order, the Existing Agents Supplemental Indemnification, or as a result of Brazilian or other applicable law, including, for the avoidance of doubt and without limitation, the Tranche 2 Notes and the Indentures.

provided, in each case, that such injunction shall be effective solely within the territorial jurisdiction of the United States.

8. With respect to the issuance of the Plan Consideration and the cancelation and removal of the Tranche 2 Notes from DTC's records, as contemplated by the EJ Plan, the Trustees and other Existing Agents, including their respective agents, successors and assigns, shall be required to confirm the drawdown balances with DTC in accordance with DTC's operational arrangements. In addition, (a) the Debtors shall provide distribution details with respect to the Plan Consideration to the Trustees and DTC (as applicable), including customary documentation to DTC in order to provide for (i) the drawdown and removal of the Tranche 2 Notes from DTC's records and (ii) the issuance of the Plan Consideration, (b) the Trustees shall be authorized (but not obligated) to issue any distribution notice reflecting the rates provided by the Debtors, and (c) neither the Trustees, the other Existing Agents nor any of their respective agents, attorneys, successors or assigns shall be required to provide any indemnity to DTC or post any bond or other security in connection with such cancelation and removal. As a condition precedent to receiving any distribution on account of the Tranche 2 Notes (including, for the avoidance of doubt, any Plan Consideration), each holder of Tranche 2 Notes under the respective Indentures shall be deemed to have surrendered such note(s) or other documentation underlying such note(s), including all rights and claims thereunder, to the Debtors' affiliates in accordance with the EJ Plan.

9. Subject to the continuing effectiveness of the EJ Plan and Brazilian Confirmation Order, and upon the issuance of the Plan Consideration, (a) DrillCo or any of its affiliates shall subrogate into the Tranche 2 Notes, at which point in time the Tranche 2 Notes will constitute only intercompany claims against the Debtors (the "Tranche 2 Intercompany Claims"), in each case, in accordance with the EJ Plan and other applicable law, (b) all remaining positions on account of the Tranche 2 Notes on the books and records of the Trustees, other Existing Agents,

and DTC shall be canceled and removed, and (c) the Indentures, instruments and certificates and any and all other documents evidencing the Noteholders' claims and rights related thereto (including claims against the Trustees and any other Existing Agent) shall be deemed permanently and irrevocably assigned to DrillCo and the Noteholders' rights to enforce any such claims shall immediately cease and transfer to DrillCo. For the avoidance of doubt, nothing in this Order shall affect (i) the Indentures (as amended) remaining in effect solely with respect to the Tranche 2 Intercompany Claims, (ii) Bonds 2022 Charging Lien and Bonds 2021 Charging Lien (each as defined in the EJ Plan) and the indemnification rights of the Trustees or other Existing Agents under the Indentures, Existing Agents Supplemental Indemnification, or the rights of the Trustees or other Existing Agents and of advisors to the Ad Hoc Group to be paid fees and expenses (including, for the avoidance of doubt, legal fees) that are not discharged pursuant to the EJ Plan or Brazilian Confirmation Order, including fees and expenses incurred after the date hereof, in each case, in accordance with the EJ Plan and the Indentures, (iii) cancelation and removal of the Tranche 2 Notes from the books and records of the Trustees, other Existing Agents, and DTC, or (iv) rights of the Debtors' affiliates under the Tranche 2 Intercompany Claims, which shall exist on the books and records of the Debtors' applicable affiliates solely as an intercompany claim, in each case as provided in the EJ Plan and in accordance with applicable law.

10. The Directed Parties are (i) directed and authorized to take any and all lawful actions consistent with any such Directed Party's rights and duties under the Indentures and related documents that are reasonably necessary to give effect to and implement the EJ Plan and the Brazilian Confirmation Order and the transactions contemplated thereunder, as applicable, including, without limitation, the implementation of the Closing Acts, the consummation of the

New Money Investment, and the issuance of the Plan Consideration (as applicable), subject to the terms and conditions of the documents under which they have been or will be appointed to act and (ii) authorized to take any other lawful action as instructed (in writing) by, and at the expense of, the Debtors that may be necessary to treat the Tranche 2 Notes in accordance with the EJ Plan and this Order.

11. The Directed Parties, including the Trustees and other Existing Agents, may conclusively rely upon and shall incur no liability and be exculpated and released from any liability for any action or inaction taken in connection with this Order, except for any liability arising from any action or inaction constituting gross negligence, actual fraud, or willful misconduct, in each case as finally determined by this Court.

12. The Foreign Representative, the Debtors and their respective expressly authorized representatives and agents are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order, including, without limitation, to implement the terms of the EJ Plan and related restructuring transactions (including, for the avoidance of doubt, consummation of the New Money Investment and implementation of the Closing Acts) and are solely responsible for providing any instruments required by DTC, unless such instruments can only be provided by the Existing Agents and the Foreign Representative and the Debtors, as applicable, are authorized to use any property and to continue operating any businesses within the territorial jurisdiction of the United States.

13. The administration, realization, and distribution of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is entrusted to the Foreign Representative, and the Foreign Representative is established as the exclusive representative of the Debtors in the United States pursuant to section 1521(a) of the Bankruptcy Code.

14. No action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the EJ Plan or any order entered in these Chapter 15 Cases or in any adversary proceedings or contested matters in connection therewith, shall be deemed to constitute a waiver of the immunity afforded the Foreign Representative pursuant to sections 306 and 1510 of the Bankruptcy Code.

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in his discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

16. A copy of this Order, confirmed to be true and correct, shall be served, within seven (7) business days of entry of this Order, upon the Notice Parties, with such service being good and sufficient service and adequate notice for all purposes.

17. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation, implementation, enforcement, amendment, or modification of this Order.

Dated: [·], 2023
New York New York

HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE