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BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO RECOGNIZES ITS FIRST CHAPTER 15 CASE

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On March 5, 2020, the Bankruptcy Court for the District of Puerto Rico (“Bankruptcy Court”) entered an order converting a set of jointly-administered chapter 7 bankruptcy cases to cases pending under chapter 15 of the United States Bankruptcy Code (“Bankruptcy Code”).

After discovering that they were likely the victims of a fraudulent investment scheme, a number of the defrauded investors (“Petitioning Creditors”) swiftly took action. In total, the quantum of fraud amounted to over \$55 million and was perpetrated by an individual, Ronald Talmage utilizing a network of companies (the “Debtors”) as cover for a Ponzi scheme. In 2017, one of the Debtors’ secured creditors placed the Debtors into a British Virgin Islands receivership. Subsequently, after identifying potential assets of such companies¹ located within the United States, the Petitioning Creditors filed involuntary petitions for relief under chapter 7 of the Bankruptcy Code on August 26, 2019. Around the same time, one of the Petitioning Creditors sought to liquidate the Debtors in the BVI and filed an Originating Application for the appointment of liquidators to the Debtors.

The first attempt at recognition under chapter 15 was initially denied by the Bankruptcy Court for failure to meet all chapter 15 eligibility requirements. After the Originating Application was filed in the BVI, the Petitioning Creditors sought conversion of the involuntary chapter 7 cases to cases under chapter 15 to allow for the soon-to-be-appointed liquidators to serve as the sole fiduciary over the Debtors’ assets both within the United States and abroad. Because the Bankruptcy Court initially found that the requirements for obtaining relief pursuant to chapter 15 were not met, the Bankruptcy Court denied conversion to chapter 15. In denying the Petitioning

¹ These companies are the Debtors and consist of New Century Properties Limited, Heng Cheong Pacific Limited, and World-Wide Investment Services Limited.

Creditors' Motion to Convert, the Bankruptcy Court focused on § 1515 (a) & (b) of the Bankruptcy Code, which enumerates the requirements for commencing a chapter 15 case. Namely, § 1515 (a) requires that a *foreign representative* apply to the court by filing a petition for recognition. Further, § 1515 (b) sets forth the evidentiary requirements before recognition of a foreign proceeding can be obtained.

Thereafter, on October 18, 2019, the Eastern Caribbean Supreme Court of the BVI conducted its hearing on the Originating Application, entered winding up orders for each of the Debtors and appointed Cosimo Borrelli and Colin Wilson of Borrelli Walsh Limited as the Debtors' joint and several liquidators. With the liquidation proceeding commenced and the duly appointed liquidators now qualifying as a "foreign representative" within the meaning of the Bankruptcy Code, the foreign proceeding was now fully ready for recognition by the Bankruptcy Court. Consequently, the liquidators moved the Bankruptcy Court for recognition of the liquidation proceeding as a foreign main proceeding within the meaning and effect of chapter 15 of the Bankruptcy Code. With recognition now being sought by the statutorily prescribed party, the duly appointed Foreign Representative, the Bankruptcy Court granted the liquidators' Motion for Recognition. Because relief under chapter 15 was sought in the pending chapter 7 case, where the role of fiduciary to the bankruptcy estate is ordinarily held solely by a chapter 7 trustee, this expectedly created some conflict with the overlapping roles of the Chapter 7 Trustee in the jointly-administered cases and the Foreign Representatives. The Chapter 7 Trustee moved for reconsideration of the Bankruptcy Court's Order Granting Recognition, arguing that its role, as the fiduciary of the bankruptcy estate, pursuant to chapter 15, could overlap with the traditional role of chapter 7 trustee. Ultimately, the Chapter 7 Trustee agreed to withdraw her Motion for Reconsideration of the Order Granting Recognition paving the way for conversion of the jointly-administered cases to cases under chapter 15 of the Bankruptcy Code, discharging the Chapter 7 Trustee of her duties.

The Debtors' Renewed Motion, seeking conversion to chapter 15, was ultimately granted by the Bankruptcy Court on March 5, 2020. This conversion to chapter 15 provides a novel approach for achieving relief under chapter 15 of the Bankruptcy Code given that chapter 15 relief was obtained from within an existing case under another chapter of the Bankruptcy Code. Notably, while the Bankruptcy Code does not provide any express statutory mechanism for conversion to chapter 15 from another chapter of the Bankruptcy Code, conversion to chapter 15 is similarly not disallowed by the Bankruptcy Code. This novel bankruptcy case results in one of the first chapter 15 filings in the Bankruptcy Court for the District of Puerto Rico.