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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LIFE PREMIUM FUND, SPC,

Debtor in a Foreign Proceeding.

Chapter 15

Case No.: 17-11899

**FOREIGN REPRESENTATIVES' VERIFIED PETITION FOR RECOGNITION
OF THE DEBTOR'S CAYMAN ISLANDS' LIQUIDATION PROCEEDING
AND MOTION FOR AN ORDER GRANTING RELATED RELIEF
UNDER 11 U.S.C. §§ 105(a), 1509, 1515, 1517, 1520, 1521, 1525, AND 1527**

David Martin Griffin and Andrew Richard Victor Morrison (the "Petitioners" or "Foreign Representatives")¹ of FTI Consulting (Cayman) Limited ("FTI"), in their capacity as the court-appointed joint official liquidators (the "Liquidators") responsible for asset recovery internationally and duly-authorized foreign representatives of the Cayman Islands' liquidation proceeding, Cause No. FSD 3 of 2015 (AJJ) (the "Cayman Proceeding") of the above-captioned debtor, Life Premium Fund, SPC (the "Debtor" or "Life Premium"), which is pending before the Honorable Justice Andrew J. Jones QC of the Financial Services Division of the Grand Court of the Cayman Islands (the "Cayman Court") under section 92 of the Cayman Islands Companies Law (2016 Revision) (the "Companies Law") under the laws of the Cayman Islands ("Cayman"),

¹ Capitalized terms used but not defined herein have the meanings assigned to them in the Foreign Representative Declaration.

respectfully submit this petition for recognition (together with the Official Form 401, *Chapter 15 Petition for Recognition of a Foreign Proceeding* filed contemporaneously herewith, the “Chapter 15 Petition”) and move the Court for entry of an order, substantially in the form annexed hereto as **Exhibit A** (the “Proposed Order”), recognizing the Cayman Proceeding as a “foreign main proceeding” under section 1517 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and granting related relief under sections 105(a), 1509, 1515, 1517, 1520, 1521, 1525, and 1527 of the Bankruptcy Code. In support of the Chapter 15 Petition, the Petitioners have filed contemporaneously, and incorporate by reference, the *Declaration of Andrew Richard Victor Morrison as Authorized Foreign Representative in Support of the Petition for Recognition of the Cayman Islands’ Liquidation Proceeding as the Foreign Main Proceeding* [ECF No. 2] (the “Foreign Representative Declaration” or “Frgn. Rep. Decl.”), and respectfully state as follows:

PRELIMINARY STATEMENT

1. The Cayman Proceeding is an official liquidation proceeding of the Debtor² pending in Cayman that has been administered by the Foreign Representatives over the last two years. It is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code because the Debtor has the center of its main interests in Cayman.

2. The Foreign Representatives are two persons appointed as joint official liquidators of the Debtor, with the power to act jointly and severally, under the Winding Up Order (defined below) of the Cayman Court dated March 6, 2015.³ The Foreign Representatives

² When the liquidation proceeding was commenced, the Debtor had its registered address and maintained its offices at the offices of Appleby Trust (Cayman) Ltd., Clifton House, 75 Fort Street, P.O. Box 1350 GT, George Town, Grand Cayman, KY1-1104, Cayman Islands.

³ The Winding Up Order authorizes the Foreign Representatives, among other things, to commence proceedings for recognition of their appointment and/or ancillary relief in any relevant jurisdiction, including the United States of America. See Winding Up Order, annexed as **Exhibit A** to the Foreign Representative Declaration.

were authorized to engage Kobre & Kim LLP to commence this proceeding under Chapter 15 of the Bankruptcy Code and to investigate whether the Debtor and/or the Foreign Representatives have any claims or causes of action against third parties under the Chapter 15 Authorization Order (defined below) of the Cayman Court dated April 11, 2017.

3. The Chapter 15 Petition, accompanied by the Foreign Representative Declaration and other supporting documents and statements, meets the requirements of section 1515 of the Bankruptcy Code. Therefore, and as further set forth below, the Foreign Representatives respectfully request that this Court approve the Chapter 15 Petition and grant recognition and other related relief under the Bankruptcy Code. The Foreign Representatives currently do not seek interim relief under section 1519 of the Bankruptcy Code.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference dated January 31, 2012, M-431, *In re Standing Order of Reference* Re: Title 11, 12 Misc. 00032 (S.D.N.Y. Feb. 2, 2012) (Preska, C.J.) (the “Amended Standing Order”).

5. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P). This case has been properly commenced under section 1504 of the Bankruptcy Code by the filing of this Chapter 15 Petition and related request for recognition of the Debtor’s Cayman Proceeding as a foreign main proceeding under section 1515 of the Bankruptcy Code.

6. For reasons further discussed below, venue of this proceeding is proper in this judicial district under 28 U.S.C. § 1410.

7. The statutory predicates for the relief requested herein are sections 105(a), 1509, 1515, 1517, 1520, 1521, 1525, and 1527 of the Bankruptcy Code.

FACTUAL BACKGROUND

A. The Debtor's Corporate History and Portfolios

8. On May 8, 2007, Life Premium was incorporated as a closed-ended exempted segregated portfolio company under the laws of Cayman. An "exempted" segregated portfolio company is prohibited from undertaking business in Cayman, except in furtherance of its business carried on outside Cayman, under the Companies Law. It may enter into contracts in Cayman and exercise all of its powers in Cayman, as necessary for it to carry on its business outside of Cayman. So, for example, Life Premium could employ staff or agents in Cayman and have offices in Cayman in furtherance of its business outside Cayman.

9. Life Premium carried on business as an investment fund. It was formed to procure and pool: (a) life settlement policies that insure the lives of elderly persons who were either terminally or chronically ill; and (b) rights to receive death benefits that would otherwise have been paid to the beneficiary of the insured or original owner, capitalizing on their maturity, or selling the assets before their maturity. Life Premium initially established and operated three segregated portfolios: LS1, LS2, and LS3. An additional portfolio, LS4, was established in or about August 2011.

10. Each portfolio's assets and liabilities must be entirely segregated from the assets and liabilities of the other portfolios and the general assets and liabilities of Life Premium under the Companies Law. Each portfolio was intended to have different trading and investment objectives and strategies for investment. Investors were offered non-voting participating shares in the portfolios.

11. LS1 originally held "Wholly Owned Policies," which are policies where Life Premium owns 100% of the interest in the life settlement policies. LS2 and LS3 originally held

“Fractional Policies,” which are policies where Life Premium only holds a fraction of the total interest in the life settlement policies. The key difference between LS2 and LS3 was that investors in LS2 paid cash for their shares, whereas investors in LS3 were issued shares in exchange for the value of interests in Fractional Policies which those investors transferred to LS3.

12. During or before 2008, LS2 and LS3 portfolios were purportedly combined into a new consolidated portfolio known as LS2/3.⁴ Further, the Wholly Owned Policies originally held by LS1 were transferred to LS2/3, pursuant to certain Whole Policy Purchase Agreements entered into in 2008 and 2009. The Liquidators determined that, as a result of those transfers, LS1 no longer held any Wholly Owned Policies and, by the time the Liquidators were appointed, had an inter-portfolio receivable from LS2/3 in the amount of \$2,170,716.

13. In addition, LS2/3 transferred the Wholly Owned Policies to LS4, under a Wholly Owned Purchase Agreement dated August 31, 2014. As a result of those transfers, and upon their appointment, the Liquidators determined that (a) LS4 held the Wholly Owned Policies, which originally were held by LS1 (subject to certain policies that had lapsed or matured in the meantime) and Fiducia Capital Advisors LLC, a Delaware registered company jointly owned by LS1 and LS2/3; (b) LS2/3 had an inter-portfolio receivable from LS4 in the amount of \$3,946,420; and (c) LS1 had an inter-portfolio receivable from LS4 in the amount of \$660,963.⁵

B. Commencement of the Debtor’s Cayman Proceeding

14. On January 6, 2015, a petition (“Winding Up Petition”) was presented by Bernardo Emilio Martin (“Petitioning Investor”), to wind up Life Premium on three grounds: (a) Life Premium was insolvent; (b) it was just and equitable that Life Premium be wound up; and

⁴ It appears that the LS2 and LS3 investors were not notified of the consolidation.

⁵ The Petitioners were advised that, under the Companies Law, it is permissible to transfer assets and liabilities between portfolios of a segregated portfolio company, provided that the transfers are for full value.

(c) the period of six years had expired, which was the intended duration of Life Premium, according to its offering documents.

15. As required by the Companies Law and the Companies Winding Up Rules 2008 (as amended) (“CWR”), the investors of the Debtor’s four portfolios were given notice of the filing of the Winding Up Petition and the request for the Liquidators’ appointment in (a) the *Cayman Compass* newspaper on February 9, 2015 and (b) the *Ambito Financiaro* newspaper in Argentina on February 10, 2015 (as that is where the majority of the investors are located). The Cayman Court also ordered that Advanced Fund Administration AFA (Cayman) Limited (“AFA”), Life Premium’s administrator, serve copies of the Winding Up Petition and supporting affidavits on each investor of Life Premium by email or, in the absence of email addresses, by mail. AFA carried out service on all investors on February 5, 2015.

16. The complaints stated in the Winding Up Petition can be summarized as follows:

- a) Since April 10, 2010, there was no independent oversight of Life Premium Advisors, Ltd., Life Premium’s investment manager (“the Investment Manager”), because Life Premium’s directors were the sole controllers of both Life Premium and the Investment Manager.
- b) In breach of Life Premium’s articles of association (the “Articles”) and the Confidential Master Private Placement Memorandum dated October 8, 2007 (the “PPM”), no annual audited financial statements had ever been provided.
- c) As of December 31, 2009, Life Premium stated it held fifty two (52) policies, whereas as of February 28, 2014, it stated it held twenty six (26) policies. The apparent loss of the policies had never been explained.

- d) In breach of the duty imposed by section 219(6) of the Companies Law, Life Premium's directors failed to keep the assets of LS2 and LS3 segregated. In breach of their obligations under the Companies Law, the directors caused assets and liabilities of the portfolios to be comingled, and purported loan transactions and receivables were created between the portfolios.
 - e) Life Premium failed to comply with the investment criteria set forth in the PPM.
 - f) As required by the Articles and the PPM, Life Premium's directors failed to take any meaningful steps to preserve Life Premium's assets. Specifically, the directors did not act in Life Premium's best interests when they failed to: (i) question and/or verify the accuracy and authenticity of life expectancy certificates for insured persons; or (ii) obtain new life expectancy certificates for insured persons.
 - g) By failing to keep investors informed of the imminent lapse of policies or requesting funding from them to pay premiums, Life Premium's directors permitted or took insufficient steps to prevent Life Premium's assets to be wasted and therefore failed to act in the company's best interests.
17. The Winding Up Petition was supported by one investor of LS1, twenty nine (29) investors of LS2, and seventy nine (79) investors of LS3.
18. On March 5, 2015, Appleby, Life Premium's attorneys, confirmed that it would not oppose the Winding Up Petition.
19. Under the circumstances, an order dated March 6, 2015 (the "Winding Up Order") was entered by the Cayman Court, placing Life Premium into official liquidation and appointing the Liquidators.

C. The Debtor's Cayman Proceeding and Center of Its Main Interests

20. Although Life Premium was restricted from carrying on business in Cayman before its liquidation, that did not mean Life Premium had no presence there. For example, before the appointment of the Liquidators on March 6, 2015, the registered office of Life Premium was maintained at the offices of Appleby Trust (Cayman) Ltd. ("Appleby Trust"), Clifton House, 75 Fort Street, P.O. Box 1350 GT, George Town, Grand Cayman, KY1-1104, Cayman Islands. Appleby Trust was responsible for Life Premium's annual filings with the Cayman Islands Registrar of Companies and held and maintained the registers of Life Premium's directors and voting members.

21. After Life Premium was placed into official liquidation to be wound up in accordance with the Companies Law, Life Premium's registered office was changed to FTI's offices, 2D Landmark Square, 64 Earth Close, P.O. Box 30613 SMB, Grand Cayman KY1-1203, Cayman Islands. On October 1, 2015, FTI moved its offices, and so the Debtor's registered address was changed to Suite 3212, 53 Market Street, Camana Bay, P.O. Box 30613, Grand Cayman, KY1-1203, Cayman Islands.

22. Further, under Cayman law, *situs* of the shares of a Cayman Islands company is the place of its incorporation, i.e., the Cayman Islands. In addition, AFA, a Cayman fund administration firm with offices located at 5th Floor, Cayman Corporate Centre, 27 Hospital Road, George Town Grand Cayman, Cayman Islands was the administrator of Life Premium. AFA was responsible for fund administration and audit assistance, including calculation of net asset values, investor record keeping and quarterly reporting, transfer agency services and shareholder services, treasury operations, preparation of monthly accounting packs and annual

financial statements, co-ordination of audits by independent accountants and general administration. AFA stopped performing its services for the Debtor in October 2013.

23. Prior to the Winding Up Order and appointment of the Liquidators, the directors of Life Premium were Messrs. Ray Cifre, Fernando Guerrero, Roberto Carreto, and William Scott Page. Based on the limited and conflicting information available to the Liquidators, they understand that Mr. Carreto and Mr. Page resigned as directors prior to July 2011. Mr. Guerrero is a financial services professional based in Mexico. Mr. Page is the President and Chief Executive Officer of The Lifeline Program (“Lifeline”), which provides policies in the life settlements industry and through which Life Premium sourced policies, and still relies on for certain discrete administrative matters related to residual policies. Lifeline is located in Tucker, Georgia. Mr. Cifre was also a director of Lifeline and, upon information and belief, has resided in New York and Puerto Rico. Mr. Cifre and Mr. Guerrero were also directors of and controlled the Investment Manager, which is a Cayman exempt company which operated from New York. Mr. Carreto purports to have resigned as a director from both entities on September 12, 2007.

24. Life Premium also had three (3) bank accounts in the names of LS1, LS2/3, and LS4, plus an additional “general” account, with CIBC FirstCaribbean Bank in Cayman. The general account was opened in April 2011, the LS1 and LS2/3 accounts in May 2011, and the LS4 account in March 2012. Thereafter, these were the only operating accounts for Life Premium, which were utilized for all receipts and payments, including, for example, taking receipt of any policy maturity proceeds and payment of policy premiums and service provider fees. As of March 6, 2015, the date the Winding Up Order was entered, the LS1 bank account held US\$788, the LS2/3 bank account held US\$50,918, and the LS4 bank account held US\$7,209. The general account was closed in July 2014.

25. The restriction on the carrying on of an “exempted” company’s business inside Cayman does not apply after a company commences liquidation in Cayman. This is because the business and assets of the company are brought under the control of the liquidators, who are required to wind up Life Premium under the supervision of the Cayman Court pursuant to Part V of the Companies Law.

26. In addition, Cayman law ⁶ requires that at least one official liquidator be resident in Cayman. In this case, both Liquidators are residents of Cayman.

27. Upon the entry of the Winding Up Order, the Liquidators took the various steps required under the Companies Law and the CWR, including the publication of the statutory notices and the convening of the first meeting of the investors of Life Premium.

28. The Liquidators are obligated under the Companies Law to collect and liquidate the Debtor’s assets under the supervision of the Cayman Court with a view to making distributions to creditors and investors on account of their allowed claims.

29. The work undertaken by the Liquidators over the last two years has included but is not limited to:

- a) Identifying potential buyers for the life settlement policies and marketing them for sale;
- b) Negotiating with potential buyers and agreeing to a transaction to dispose of the Wholly Owned Policies;
- c) Administering and maintaining the life settlement policies, including the sourcing of loans to fund premium payments in relation to both Wholly Owned and Fractional Policies;

⁶ Regulation 8 of the Insolvency Practitioners Regulations 2008.

- d) Seeking to obtain and investigate Life Premium's books and records and considering potential legal claims arising from those investigations;
- e) Seeking legal advice in relation to the validity of inter-portfolio transactions and conducting an accounting restatement exercise that was necessary based on the legal advice;
- f) Establishing liquidation committees of investors and creditors for the different portfolios;
- g) Preparing statutory reports to and holding meetings of investors, creditors, and the liquidation committees;
- h) Engaging in regular communications with investors, creditors, and liquidation committee members, including the setup and administration of a website for the purpose of communicating with investors; and
- i) Preparing and filing various applications with the Cayman Court for directions in relation to the management of the Debtor's liquidation and authorization for the Liquidators to perform certain actions.

30. In furtherance of the Liquidators' investigations and consideration of potential legal claims, the Petitioners sought and obtained an order from the Cayman Court to commence a chapter 15 case seeking recognition of the Cayman Proceeding and the assistance of courts in the United States to fulfill their duties by collecting and liquidating the Debtor's assets.

31. By order dated April 11, 2017 (the "Chapter 15 Authorization Order"), the Cayman Court explicitly authorized the Petitioners to engage Kobre & Kim LLP to commence this proceeding under Chapter 15 of the Bankruptcy Code and to investigate whether the Debtor and/or the Foreign Representatives have any claims or causes of action against third parties.

RELIEF REQUESTED

32. The Petitioners request that this Court enter an order, substantially in the form of the Proposed Order annexed hereto as **Exhibit A**, under sections 105(a), 1509, 1515, 1517, 1520, 1521, 1525, and 1527 of the Bankruptcy Code:

- a. granting the Chapter 15 Petition;
- b. finding and concluding that the Cayman Proceeding is a “foreign proceeding” as defined in section 101(23) of the Bankruptcy Code;
- c. finding and concluding that the Petitioners are the “foreign representatives” of the Cayman Proceeding as defined in section 101(24) of the Bankruptcy Code;
- d. finding and concluding that the Chapter 15 Petition, together with the Foreign Representative Declaration (and exhibits thereto), meets the requirements of section 1515 of the Bankruptcy Code;
- e. recognizing the Cayman Proceeding as a “foreign main proceeding” under section 1517 of the Bankruptcy Code;⁷
- f. granting relief available as of right upon recognition of a foreign main proceeding under chapter 15 of the Bankruptcy Code, including, without limitation, relief under sections 1509(b) and 1520 of the Bankruptcy Code;
- g. granting additional appropriate relief authorized under section 1521(a) of the Bankruptcy Code and, to the extent necessary, Rule 65 of the Federal Rules of Civil Procedure as made applicable herein by Rule 7065 of the Federal Rules of Bankruptcy Procedure, including, without limitation:
 - i. staying the commencement or continuation of any action or proceeding without the consent of the Petitioners concerning the Debtor’s assets, rights, obligations, or liabilities to the extent not stayed under section 1520(a)(1) of the Bankruptcy Code;
 - ii. staying execution against the Debtor’s assets to the extent not stayed under section 1520(a)(2);
 - iii. suspending the right to transfer or otherwise dispose of any of the Debtor’s assets to the extent this right has not been suspended under section 1520(a)(3);

⁷ Out of an abundance of caution, and to the extent the Court determines the Debtor’s center of main interests is not in the Cayman Islands, the Petitioners alternatively request recognition of the Cayman Proceeding as a “foreign nonmain proceeding.”

- iv. providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the Debtor's assets, affairs, rights, obligations, or liabilities under section 1521(a)(4) of the Bankruptcy Code, Rule 2004 of the Federal Rules of Bankruptcy Procedure ("Rule 2004"), and Local Rule 2004-1 of the United States Bankruptcy Court for the Southern District of New York ("Local Rule 2004-1"), and finding and concluding that any such examinations, evidence, or information is necessary and appropriate under the law of the United States to assist the Petitioners in the fulfillment of their duties as Joint Official Liquidators and Foreign Representatives of the Cayman Proceeding;
- v. entrusting the administration or realization of all of the Debtor's assets within the territorial jurisdiction of the United States to the Petitioners under section 1521(a)(5) of the Bankruptcy Code; and
- vi. granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 550, and 724(a);
- h. entrusting the distribution of all of the Debtor's assets located within the United States to the Petitioners under section 1521(b) of the Bankruptcy Code;
- i. finding and concluding that the relief requested under section 1521 of the Bankruptcy Code sufficiently protects the interests of creditors and other interested entities, including the Debtor in satisfaction of section 1522(a) of the Bankruptcy Code;
- j. finding and concluding that neither recognition of the Cayman Proceeding as a "foreign main proceeding" nor the additional relief requested in the Chapter 15 Petition is manifestly contrary to the public policy of the United States or otherwise prohibited under section 1506 of the Bankruptcy Code; and
- k. granting such other and further relief as this Court may deem just and proper.

BASIS FOR RELIEF REQUESTED

A. The Court Should Recognize the Cayman Proceeding as a Foreign Main Proceeding and the Petitioners as the Foreign Representatives

33. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, the Court shall enter an order recognizing a foreign proceeding as a foreign main proceeding if:

(1) such foreign proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code; (2) the foreign representative applying for recognition is a person or body;

and (3) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See In re Overnight & Control Comm'n of Avánzit, S.A.*, 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008).

34. The Court has proper jurisdiction to determine this matter and to grant the relief requested by the Foreign Representatives, the Debtor meets the eligibility and venue requirements, and this Chapter 15 Petition meets all of the requirements under section 1517 of the Bankruptcy Code.

1. The Court Has Jurisdiction to Recognize the Cayman Proceeding and to Grant the Relief Requested by the Foreign Representatives

35. As stated above, this Court has jurisdiction to hear and determine chapter 15 cases as core matters under 28 U.S.C. §§ 157(b)(2)(P) and 1334 and the Amended Standing Order.

36. Sections 1504 and 1509(a) of the Bankruptcy Code provide that a chapter 15 case is properly commenced when a foreign representative files a petition for recognition of a foreign proceeding. The Cayman Proceeding qualifies as a “foreign proceeding,” and the Petitioners qualify as its “foreign representatives.” Therefore, the Petitioners properly commenced this chapter 15 case by filing this Chapter 15 Petition. Moreover, Life Premium – as the entity subject to the Cayman Proceeding – is eligible to be a chapter 15 “debtor” as that term is defined in section 1502(1) of the Bankruptcy Code.

37. Venue is also proper in this district. Section 1410 of title 28 of the United States Code provides that a chapter 15 case “may be commenced in the district court of the United States for the district: (1) in which the debtor has its principal place of business or principal assets in the United States; (2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or (3) in a case other than those specified in paragraph (1) or (2), in which venue

will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.” 28 U.S.C. § 1410.

38. Here, the Debtor has several business ties, discovery targets, and potential assets residing within this district. First, the Debtor’s former Investment Manager conducted business within this district. Further, and although currently inactive since the commencement of the liquidation, the Investment Manager may be in possession of key information and thus is subject to potential discovery. Second, Mr. Cifre, one of the Debtor’s key former directors, upon information and belief, has resided in New York. Third, the Debtor had bank accounts at JP Morgan Chase, New York branch, and because the bank retains in its possession relevant documents that are needed by the Petitioners to complete its investigation, it is subject to discovery as well. Fourth, before commencement of the Cayman Proceeding, the Debtor retained a law firm based in New York and paid legal fees in excess of \$145,000.00. Moreover, the Debtor has deposited funds in the amount of \$30,000.00 into a client trust account of Kobre & Kim LLP located at Citibank, N.A. in New York County and thus within this district (the “Escrow Account”).

39. Given the Debtor’s business ties to New York, likely discovery and potential for asset recovery within this district, and due to the presence of the Debtor’s investment manager, former director, former bank account, and monetary value held by Kobre & Kim, all within this district, the Foreign Representatives, on behalf of the Debtor, assert that there is property within this district on which to ground venue. The Petitioners intend to take steps to investigate and, if appropriate, to pursue claims and causes of action which claims and any recovery obtained would constitute additional property of the Debtor located within this district. *See supra* ¶ 6. (Frn. Rep. Decl. ¶ 45.) Accordingly, the Foreign Representatives respectfully submit that

venue in this district is proper under both sections 1410(1) and 1410(3) of title 28 of the United States Code.

40. Moreover, the presence of these assets within the United States also renders the Foreign Representatives of the Debtor eligible to file this chapter 15 case under section 109(a) of the Bankruptcy Code. *See In re Suntech Power Holdings Co*, 520 B.R. 399, 411 (Bankr. S.D.N.Y. 2014); *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013) (applying section 109(a)'s local property requirement to chapter 15 cases). Further, the Debtor maintains funds in the Escrow Account located in New York County and thus within this district. The Debtor retains full ownership of the funds in the Escrow Account unless and until the funds are released at the Petitioners' direction. The Petitioners also anticipate that through recognition of the Cayman Proceeding and the exercise of discovery powers requested herein, they will be able to identify additional assets, specifically claims and causes of action belonging to the Debtor located in the territorial jurisdiction of the United States. (Frgn. Rep. Decl. ¶ 65.) The Foreign Representatives respectfully submit that these assets satisfy the requirement of section 109(a) of the Bankruptcy Code. *See, e.g., In re Suntech Power Holdings Co.*, 520 B.R. at 412-13 (concluding section 109(a) was satisfied by an escrow account established using debtor's funds one day before chapter 15 petition was filed (citing *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 372-73 (Bankr. S.D.N.Y. 2014) (finding section 109(a) satisfied by potential causes of action and funds in retainer account with foreign representative's law firm in the United States))).

2. The Cayman Proceeding Is a Foreign Main Proceeding

41. The Cayman Proceeding is a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code. *First*, the Cayman Proceeding comes within 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: (1) a collective judicial or administrative proceeding relating to insolvency or adjustment of debt; (2) pending in a foreign country; (3) under the supervision of a foreign court; and (4) for the purpose of reorganizing or liquidating the assets and affairs of the debtor. *See* 11 U.S.C. § 101(23). The Bankruptcy Code defines “foreign court” as “a judicial or other authority competent to control or supervise a foreign proceeding.” *See* 11 U.S.C. § 1502(3).

42. The Cayman Proceeding fits squarely within the Bankruptcy Code’s definition of a “foreign proceeding.” Insolvency proceedings in Cayman are governed by Part V of the Companies Law. Once a proceeding is converted to an official liquidation, the Companies Law provides that officers and directors of the debtor company are no longer allowed to manage its affairs, and the assets of the debtor are collected and sold by the official liquidator under the continued supervision of the Cayman Court. The Cayman Proceedings is a judicial proceeding in a foreign country, the Cayman Islands, subject to the control and supervision of the Cayman Court. All claims against the Debtor must be submitted in the Cayman Proceeding⁸, and all claimants have the right to access the Cayman Court and appeal decisions of the Liquidators, if necessary. A claimant may submit a claim in the Cayman Proceeding at any time up until the final date for proving their claim in respect of the final dividend payment which the Liquidators declare they shall make in the Cayman Proceeding.⁹

43. As noted above, the Cayman Court entered the Winding Up Order, commencing the Cayman Proceeding as an official liquidation of the Debtor under the Companies Law and appointing the Petitioners as Liquidators. (Frqn. Rep. Decl. ¶ 2.) Accordingly, the Petitioners

⁸ Order 16, rule 1 (1) of the CWR.

⁹ Order 18, rule 7 of the CWR.

respectfully submit that the Cayman Proceeding qualifies as a “foreign proceeding” for purposes of chapter 15 recognition.

44. *Second*, the Cayman Proceeding qualifies as a “foreign main proceeding.” 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). The Bankruptcy Code neither defines nor provides a conclusive test for determining the location of a debtor’s center of main interests (“COMI”). However, “[i]n the absence of evidence to the contrary,” there is a statutory presumption that a debtor’s “registered office” is its COMI. *See* 11 U.S.C. § 1516(c).

45. To determine a debtor’s COMI, this court and others have placed importance on the ability of third parties to readily ascertain a corporate debtor’s COMI based on “where the debtor conducts its regular business Among other factors that may be considered are the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes.” *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 130 (2d Cir. 2013); *see also In re British Am. Ins. Co.*, 425 B.R. 884, 912 (Bankr. S.D. Fla. 2010) (“The location of a debtor’s COMI should be readily ascertainable by third parties.”); *In re Ran*, 390 B.R. 257, 266 (Bankr. S.D. Tex. 2008) (“A debtor’s centre of main interests must be identified by reference to criteria that are both objective and ascertainable by third parties.”) (internal quotation marks omitted) (citing European Council Regulation No. 1346/2000 of 29 May 2000). Additionally, where, as here, there is a time period between the commencement of a foreign proceeding and the commencement of the chapter 15 case, the court may also consider relevant activities during that gap period such as liquidation activities and administrative functions. *See, e.g., In re Fairfield Sentry Ltd.*, 714 F.3d at 137; *In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 419 (Bankr.

S.D.N.Y. 2014) (concluding, over objection, that debtor's COMI as of chapter 15 filing date was Cayman despite finding Cayman was not its COMI when the foreign liquidation proceeding was commenced, based on activities of provisional liquidators during period between filings).

46. At all times since it began operations in 2007, Life Premium has been incorporated and headquartered in Cayman. *See supra* ¶¶ 20-22. Moreover, the Debtor's Cayman Proceeding has been pending before the Cayman Court for over two (2) years now. (Frgn. Rep. Decl. ¶ 2.) Since their appointment on March 6, 2015, the Petitioners have been administering, collecting, and liquidating Life Premium's assets under the supervision of the Cayman Court. (Frgn. Rep. Decl. ¶ 25.) *See supra* ¶¶ 27-30.

47. The Petitioners are not aware of the existence of any insolvency proceeding concerning Life Premium other than the Cayman Proceeding, nor are they aware of any suggestion having been made at any time during its pendency by a creditor or party in interest that Life Premium's center of main interest is anywhere other than Cayman. (Frgn. Rep. Decl. ¶ 52.)

48. Thus, based on the facts present in this case, the Petitioners respectfully submit that Grand Cayman, Cayman Islands should be determined by this Court to be the center of the Debtor's main interests. Accordingly, given that it is pending in the Debtor's COMI, the Cayman Proceeding should be recognized as a "foreign main proceeding" under section 1517(b)(1) of the Bankruptcy Code.

49. Notwithstanding, and out of an abundance of caution, and solely to the extent the Court determines the Debtor's center of main interests is not in the Cayman Islands, the Petitioners alternatively request recognition of the Cayman Proceeding as a "foreign nonmain proceeding."

3. The Petitioners Are Proper “Foreign Representatives”

50. The second requirement for recognition of a foreign main proceeding under section 1517(a) of the Bankruptcy Code is that the “foreign representative” applying for recognition be a person or body. *See* 11 U.S.C. § 1517(a)(2). Section 101(24) of the Bankruptcy Code provides that:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding 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).

51. Here, the Petitioners are individuals who have been duly appointed by the Cayman Court to act as the Liquidators of the Cayman Proceeding.¹⁰ (Frgn. Rep. Decl. ¶¶ 1, 57.) Moreover, by the Chapter 15 Authorization Order, the Cayman Court explicitly authorized the Petitioners to commence an ancillary case seeking chapter 15 recognition of the Cayman Proceeding. (Frgn. Rep. Decl. ¶ 57.) For these reasons, the Petitioners respectfully submit that they are “foreign representatives” who are a “person or body” in satisfaction of sections 101(24) and 1517(a)(2) of the Bankruptcy Code.

4. The Chapter 15 Petition Satisfies the Requirements of Section 1515

52. 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). Specifically, as relevant here, section 1515 requires a petition for recognition of a foreign proceeding to be accompanied by “a certified copy of the decision commencing such proceeding and appointing

¹⁰ A copy of the original Winding Up Order is annexed to the Foreign Representative Declaration as **Exhibit A**.

the foreign representative”¹¹ and “a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.” 11 U.S.C. §§ 1515(b)(1) and (c).

53. Here, all of those procedural requirements are satisfied. As noted above, the Cayman Proceeding was commenced, and the Petitioners were appointed as Liquidators thereto, under the Winding Up Order. (Frqn. Rep. Decl. ¶ 2.) In addition, the Cayman Court expressly authorized the Petitioners to commence this chapter 15 case and to act as the foreign representatives of the Cayman Proceeding under the Chapter 15 Authorization Order. (Frqn. Rep. Decl. ¶¶ 57, 59.)

54. In accordance with section 1515(b)(1) of the Bankruptcy Code, copies of the original Winding Up Order and Chapter 15 Authorization Order are annexed to the Foreign Representative Declaration as **Exhibits A and B**, respectively. Finally, in accordance with section 1515(c) of the Bankruptcy Code, paragraph 60 of the Foreign Representative Declaration contains a statement identifying the Cayman Proceeding as the only foreign proceeding currently pending with respect to the Debtor.

* * *

55. For all of the reasons set forth above, the Petitioners respectfully submit that all of the requirements of section 1517(a) have been satisfied, and that the Petitioners and/or the Debtor, as applicable, are entitled to all of the relief provided as of right upon recognition under chapter 15 of the Bankruptcy Code. Accordingly, the Court should enter the Proposed Order recognizing the Cayman Proceeding as a foreign main proceeding.

¹¹ Additionally, section 1515(d) requires such certified copy to be translated into English. *See* 11 U.S.C. § 1515(d).

B. The Court Should Grant the Foreign Representative’s Request for Discretionary Relief under Chapter 15 of Bankruptcy Code

56. In addition to the relief automatically provided under sections 1509(b) and 1520 of the Bankruptcy Code upon recognition of the Cayman Proceeding, the Petitioners respectfully request that this Court provide additional relief and assistance under sections 105(a), 1521, and 1525 of the Bankruptcy Code as follows.

1. The Relief Requested under Sections 1521 Is Warranted and Appropriate Under the Circumstances

57. Upon recognition of a foreign proceeding and at the request of a foreign representative, the Court may grant (with certain express exceptions not applicable here) “any appropriate relief,” including any injunctive relief and “any additional relief that may be available to a trustee,” that is necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors. 11 U.S.C. § 1521(a).

58. Relief requested by a foreign representative may “include,”¹² among other relief:

- (1) staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- (2) staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a);
- (3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);
- (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities;
- (5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative . . . ;
- (6) extending relief granted under section 1519(a);¹³ and

¹² The term “including” (as set forth in section 1521(a)) is not limiting. *See* 11 U.S.C. § 102(3).

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

11 U.S.C. § 1521(a). Additionally, section 1521(b) provides that:

“[u]pon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative . . . provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

11 U.S.C. § 1521(b).

59. The Petitioners respectfully request that the Court grant the relief authorized by sections 1521(a) and (b) of the Bankruptcy Code. *First*, to the extent not otherwise stayed under sections 1520 and 362 of the Bankruptcy Code, the Petitioners request that the Court, in its discretion under sections 1521(a)(1), (2) and (3) of the Bankruptcy Code, enter a stay against any parties that may attempt to commence any actions and/or claims in the United States against the Debtor or its property, or otherwise attempt to transfer, encumber or dispose of such property. (Frgn. Rep. Decl. ¶ 62.) If any creditors take actions in the United States against the Debtor or its property seeking to obtain more than the distribution they are entitled under the CWR and the Companies Law – especially property which the Petitioners have yet to identify as belonging to the Debtor and/or recoverable for distribution to the Debtor’s creditors – the financial burden of such an action could be severe. (Frgn. Rep. Decl. ¶ 63.) If such creditors can effectively evade the Cayman Proceeding by commencing actions in the United States, the Petitioners, on behalf of the Debtor’s estate, would be left to defend against these suits, regardless of their merit. (*Id.*) This could irreparably deplete the resources available to the Petitioners to collect and administer the Debtor’s assets and any distributions to creditors in the Cayman Proceeding. (*Id.*) *See, e.g.*,

¹³ The Foreign Representatives are not requesting any relief under section 1519 of the Bankruptcy Code at this time, but reserve all of their rights to do that if it becomes necessary before recognition of the Cayman Proceeding as a foreign main proceeding.

In re MMG LLC, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“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.”); *In re Rubin*, 60 B.R. 269, 283 (Bankr. S.D.N.Y. 1993) (“[T]he premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury” (quoting *In re Lines*, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988))).

60. For these reasons, an additional stay under sections 1521(a)(1) and (2) would protect the interests of all of the Debtor’s investors and creditors in having claims against the Debtor and its estate valued and paid on a consistent, non-discriminatory basis as determined by the Cayman Court.¹⁴ (Frqn. Rep. Decl. ¶ 64.)

61. *Second*, the Petitioners request that the Court enter an order authorizing them to examine witnesses and take evidence and information concerning the Debtor’s assets, affairs, rights, obligations, or liabilities under section 1521(a)(4) of the Bankruptcy Code. The Petitioners have reason to believe that a substantial amount of property belonging to the Debtor was improperly transferred away in the lead-up to the commencement of the Cayman Proceeding. (Frqn. Rep. Decl. ¶ 65.) In accordance with their duties as Liquidators, the Petitioners are investigating these transfers in an attempt to find additional assets that should be collected and distributed to the Debtor’s creditors in the Cayman Proceeding. (*Id.*) That investigation has expanded beyond the borders of Cayman and led the Petitioners to believe that

¹⁴ The Petitioners submit that, to the extent the standards, procedures, and limitations applicable to an injunction are applicable to this request, they are satisfied. *See* 11 U.S.C. § 1521(e); Fed. R. Bankr. P. 7065 (incorporating Fed. R. Civ. P. 65). For all the reasons set forth herein, among others, the Petitioners submit that (i) they will be successful on the merits in their request for recognition of the Cayman Proceeding as a foreign proceeding and, in any event, such recognition will occur simultaneously with or before the granting of any relief to the Petitioners under section 1521 of the Bankruptcy Code, (ii) irreparable harm will result in the absence of injunctive relief, (iii) injunctive relief would not cause undue hardship or prejudice to the rights of any U.S. based creditors, and (iv) public policy supports the requested relief. The Petitioners reserve the right to set forth more fully the bases for this relief at the request of the Court or in the event such relief is objected to by a party in interest. (Frqn. Rep. Decl. at 22 n.3.)

such assets exist within the United States, among other countries. (Frgn. Rep. Decl. ¶ 65.) In fact, obtaining relief under section 1521(a)(4) is central to the purpose for which the Cayman Court directed the Petitioners to commence a chapter 15 case. (*Id.*)

62. The Debtor is not currently party to any litigation in the United States and, therefore, without authorization from this Court, the Petitioners will not have immediate means to otherwise obtain discovery or compel disclosures from third parties. (*Id.*) Moreover, the relief requested is consistent with relief granted by this and other courts upon granting chapter 15 recognition. *See, e.g., Transbrasil S.A. Linhas Aereas*, Case No. 11-19484, 2014 WL 1655990 (Bankr. S.D. Fla. Apr. 25, 2014) (adjudicating third-party motions with respect to Rule 2004 examination and document requests made by foreign representative under section 1521(a)(4)); *In re Hughes*, 281 B.R. 224, 227-230 (Bankr. S.D.N.Y. 2002) (holding, under statutory predecessor to Chapter 15, that scope of discovery in ancillary case was not limited by discovery available under law governing foreign proceeding, and noting that the same principle would apply under then-proposed section 1521(a)(4)). Accordingly, the Petitioners submit that authorization under section 1521(a)(4) is warranted and appropriate here.

63. *Third*, and finally, to the extent not provided by sections 1520 and 363 of the Bankruptcy Code, the Petitioners respectfully request that the Court enter an order entrusting the administration, realization, and distribution of all of the Debtor's assets within the territorial jurisdiction of the United States to the Petitioners. (Frgn. Rep. Decl. ¶ 66.)

64. Akin to the duties of a Chapter 7 trustee under section 704 of the Bankruptcy Code, the Petitioners (in their capacity as Liquidators of the Cayman Proceeding) are charged with liquidating the Debtor's assets and distributing the proceeds thereof in accordance with the Companies Law and under the supervision of the Cayman Court. (*Id.*)

65. Arguably, by continuing to fulfill these duties in the ordinary course of their appointment as the Debtor's Liquidators and the Foreign Representatives of the Cayman Proceeding with respect to assets identified and collected in the territorial United States, the Petitioners will be exercising the rights and powers provided to them as of right upon recognition under section 1520(a)(3) of the Bankruptcy Code. Nevertheless, the Petitioners respectfully submit that a more express grant of authority by the Court under sections 1521(a)(5) and 1521(b) of the Bankruptcy Code is warranted and appropriate. Among other benefits, such relief would avoid the administrative cost and delay attendant to requesting similar relief in a piece-meal fashion for assets subject to the Cayman Proceeding that the Petitioners identify as being located within the United States.¹⁵ (*Id.*)

2. The Relief Requested Sufficiently Protects the Interests of Creditors

66. Before granting relief under section 1521 of the Bankruptcy Code, the Court must be satisfied that "the interests of creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a). 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. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess. 116 (2005). Courts have construed section 1522 to require a balance of the potentially competing interests among the parties to a foreign proceeding and to provide the Court with broad latitude in granting relief to meet specific circumstances. *See, e.g., In re Atlas Shipping N.S.*, 404 B.R. 726, 740 (Bankr. S.D.N.Y. 2009).

67. Here, the Debtor's creditors are "sufficiently protected" by the treatment afforded to them in the Cayman Proceeding under the Companies Law. (Frgn. Rep. Decl. ¶ 67.) The

¹⁵ Of course, the Petitioners will comply with any notice or reporting requirements that the Court may deem necessary or appropriate.

Petitioners are not aware of any creditors in the United States and thus none are being subjected to undue inconvenience or prejudice. In any event, the Companies Law does not create any additional burdens for foreign creditors to file a claim and confers upon them the same status and rights as creditors in Cayman. (*Id.*) Moreover, the distribution scheme in liquidation prescribed under the Companies Law is substantially similar to that under the Bankruptcy Code, as it grants priority to certain administrative claims and grants secured claims priority over unsecured claims. (*Id.*) Accordingly, the ultimate distributions creditors will receive on account of their claims in the Cayman Proceeding will be materially consistent with those they would have received under United States' law. (*Id.*) While there may be exceptions on a case by case basis, courts also have consistently held that the fact 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." *Atlas Shipping*, 404 B.R. at 742. Accordingly, the Petitioners submit that the relief requested under section 1521 of the Bankruptcy Code should not be prohibited or limited by section 1522.

3. The Relief Requested Is Consistent with the Purposes of Chapter 15 and the Court's Mandate to Cooperate to the Maximum Extent Possible

68. The relief requested herein is founded on the congressional mandate that United States courts should cooperate with foreign proceedings and foreign representatives to promote the goals of chapter 15. Section 1525 of the Bankruptcy Code provides, in pertinent part, that "[c]onsistent 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." 11 U.S.C. § 1525(a). In turn, section 1501 provides, in pertinent part, that "[t]he purpose of [chapter 15 of the Bankruptcy Code] is to incorporate the Model Law on Cross-Border Insolvency so as to

provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of:

- (1) cooperation between (A) courts of the United States . . . and (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
- (2) greater legal certainty for trade and investment;
- (3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested parties, including the debtor;
- (4) protection and maximization of the value of the debtor's assets; and
- (5) facilitation of the rescue of financially troubled businesses, thereby protecting investments and preserving employment.

11 U.S.C. § 1501(a). *See also Kryz v. Farnum Place, LLC (In re Fairfield Sentry Ltd.)*, 768 F.3d 239, 245 (2d Cir. 2014) (quoting 11 U.S.C. § 1501(a)).

69. All of the relevant objectives will be furthered by granting the relief requested herein.¹⁶ By recognizing the Cayman Proceeding as a “foreign main proceeding” and enjoining creditors from commencing or continuing actions against the Debtor or its assets in the United States, the Court would be fostering cooperation between courts in Cayman and the United States and ensuring that the fair and efficient administration of the Debtor's assets in the Cayman Proceeding cannot be disrupted by creditors or other parties in interest outside of the Cayman Islands. (Frqn. Rep. Decl. ¶ 68.)

70. Moreover, by empowering the Petitioners to employ the means of investigation and discovery available under United States law and procedure, this Court would be protecting and maximizing the value of assets in the United States that belong to or were absconded from

¹⁶ Because the Cayman Proceeding is a liquidation rather than a reorganization, the objective set forth in section 1501(a)(5) is moot.

the Debtor and promoting legal certainty by ensuring those assets are collected and administered by the Petitioners in accordance with the Companies Law. (*Id.*)

4. The Relief Requested Is Consistent with the Court’s Equitable Authority

71. Finally, section 105(a) of the Bankruptcy Code enables the Court to enforce the specific statutory language of the Bankruptcy Code’s other provisions consistent with the Court’s broad equitable powers. *See* 11 U.S.C. § 105(a) (“[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title”). The Petitioners believe that the relief requested herein is expressly provided for by the statutory provisions of chapter 15, as set forth above. Out of an abundance of caution, however, and to the extent that is not the case, the Petitioners submit that the relief requested is warranted under section 105(a) of the Bankruptcy Code, as it is wholly consistent with the express provisions of Bankruptcy Code and is fair and equitable to all parties involved.

* * *

72. For the foregoing reasons, the Petitioners respectfully request that this Court grant the relief requested by the Petitioners through exercise of the discretionary authority under section 1521, its mandate to cooperate with the Cayman Court and the Petitioners under sections 1525 and 1501(a), and its equitable powers under section 105(a) of the Bankruptcy Code.

C. The Court Should Find and Conclude that None of the Relief Requested Is Manifestly Contrary to the Public Policy of the United States

73. The Court may deny a request for any relief under chapter 15 that would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. The legislative history indicates that the “public policy” exception is narrow, applying only to the “most fundamental policies of the United States.” H.R. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess. 109 (2005). “The narrow public policy exception contained in § 1506 is intended to be

invoked only under exceptional circumstances concerning matters of fundamental importance for the United States. The key determination . . . is whether the procedures used [in the foreign proceeding] meet our fundamental standards of fairness.” *In re Vitro, S.A.B. de C.V.*, 701 F.3d 1031, 1069 (5th Cir. 2012) (internal citations omitted). Importantly, it is not necessary that the result achieved in a foreign proceeding be identical to what could be obtained in the United States – “even the absence of certain procedural or constitutional rights will not itself be a bar under § 1506.” *Id.* Thus, a foreign representative should not be denied comity simply because the relief obtained in the foreign proceeding under the applicable law of that country would not be available in the United States. *See In re Condor Ins. Ltd.*, 601 F.3d 319, 327 (5th Cir. 2010).

74. The Petitioners submit that neither the Cayman Proceeding nor the relief requested in the Chapter 15 Petition warrant invocation of section 1506. Under the Companies Law, the Cayman Proceeding has provided (and continues to provide) creditors and other parties in interest with the notice and opportunities to participate and be heard that are wholly consistent with concepts of due process under United States law and jurisprudence. (Frgn. Rep. Decl. ¶ 70.) Moreover, the Cayman Proceeding has played out in a manner substantially similar to a chapter 7 case under the Bankruptcy Code, with a centralized process to assert and resolve claims against the estate and a court-appointed and supervised trustee (*i.e.*, the Petitioners) responsible for collecting and liquidating the debtor’s assets and making distributions to creditors.

75. In sum, the relief requested herein effectively extends the Debtor’s liquidation process into the United States, (a) ensuring that assets belonging to or transferred from the Debtor located within the territorial jurisdiction of the United States do not escape the reach of the Cayman Proceeding; and (b) empowering the Petitioners to employ the means of

investigation and discovery that are afforded as of right to trustees in plenary bankruptcy cases in the United States. (*Id.*) None of the relief requested by the Petitioners is contrary, let alone manifestly so, to the United States' law or public policy.

76. Accordingly, the Petitioners respectfully request that the Court find and determine that recognizing the Cayman Proceeding as a "foreign main proceeding" and granting the additional relief requested in the Chapter 15 Petition is neither prohibited nor should be limited by section 1506 of the Bankruptcy Code.

NOTICE AND HEARING

77. In accordance with section 1517(c) of the Bankruptcy Code, the Petitioners request a hearing to consider the Chapter 15 Petition (the "Recognition Hearing") be scheduled at the "earliest possible time."¹⁷

78. Notice of the Recognition Hearing is governed by Bankruptcy Rule 2002(q)(1), which provides, in pertinent part, that:

The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding.

Fed. R. Bankr. P. 2002(q)(1).

79. To the best of their knowledge and belief, the Petitioners (a) are not aware of the existence of any foreign proceedings of the Debtor other than the Cayman Proceeding, nor any person or body other than the Petitioners authorized to administer the Cayman Proceeding, (b) do

¹⁷ Although the Petitioners do not anticipate any objections to recognition of the Cayman Proceeding, applicable rules provide parties in interest twenty one (21) days from the service of summons regarding a chapter 15 petition to object thereto and require that any objection challenging a foreign representative's designation of COMI of the foreign proceeding be filed no later than seven (7) days before the hearing on recognition. *See* Fed. R. Bankr. P. 1011(b) and 1004.2, respectively.

not intend at this time to seek any provisional relief under section 1519 of the Bankruptcy Code, and (c) are not aware of any litigation pending in the United States in which the Debtor is a party as of the date hereof.

80. Accordingly, subject to any notice parties the Court may direct, the Petitioners submit that no further notice of the Chapter 15 Petition or the Recognition Hearing is required.

NO PRIOR REQUEST

81. No previous request for the relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Petitioners respectfully request that this Court: (a) enter the Proposed Order, upon notice and a hearing, substantially in the form annexed hereto as **Exhibit A**, and (b) grant such other and further relief as may be just and proper.

Dated: July 10, 2017
New York

Respectfully submitted,

KOBRE & KIM LLP

/s/ D. Farrington Yates

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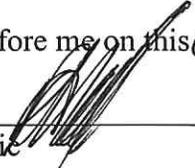
Counsel to the Foreign Representatives

VERIFICATION

Andrew Richard Victor Morrison, being duly sworn, deposes and says: I am one of the joint petitioners in this proceeding. I have read the foregoing petition and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.


Signature

Sworn to before me on this 9th day of July, 2017.



Notary Public

Pamella A. Mitchell
Notary Public for and in
the Cayman Islands
My commission expires 31st January, 2018