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*as Petitioner and Foreign Representative*

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

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| **In re:** | ) | Chapter 15 |
| **ARALCO S.A. - Indústria e Comércio, *et. al.*,**[1] | ) | Case No. 15-10419 (___) |
| | ) | Joint Administration Requested |
| **Debtors in Foreign Proceedings.** | ) | |

**FOREIGN REPRESENTATIVE'S PETITION FOR RECOGNITION OF BRAZILIAN BANKRUPTCY PROCEEDINGS AND MOTION FOR ORDER GRANTING RELATED RELIEF PURSUANT TO 11 U.S.C. §§ 105(a), 1507(a), 1509(b), 1515, 1517, 1520 AND 1521**

Petitioner, Ricardo Costa Villela (the "Petitioner" or the "Foreign Representative"), is the authorized foreign representative of Aralco S.A. - Indústria e Comércio ("Aralco") and certain of its affiliates as debtors in the above-captioned chapter 15 cases (the "Aralco Group" or the "Debtors") and in the judicial reorganization proceedings (the "Brazilian

[1] The debtors in these chapter 15 cases, along with the last four digits of each debtor's foreign tax or registration identification number, are: Aralco S.A. - Indústria e Comércio (01-80); Agral S.A. Agrícola Aracanguá (01-65); Destilaria Generalco S.A. (01-73); Alcoazul S.A. - Açúcar e Álcool (01-70); Figueira Indústria e Comércio S.A. (01-25); Aralco Finance S.A.(6520); Aracanguá Sociedade de Participação Ltda. (01-00); Agrogel - Agropecuária General Ltda. (01-82) ; and Agroazul - Agrícola Alcoazul Ltda. (01-24).

Bankruptcy Proceedings") before the Second Civil Court of Araçatuba (the "Brazilian Bankruptcy Court"), pursuant to Federal Law No. 11.101 of February 9, 2005 under the laws of the Federative Republic of Brazil ("Brazil"). The Petitioner, on behalf of the Debtors and by and through his undersigned counsel, respectfully submits this verified petition (the "Verified Petition") in furtherance of the forms of voluntary petition (collectively, the "Forms of Voluntary Petition") filed concurrently herewith [ECF No. 1] (this Verified Petition, together with the Forms of Voluntary Petition, the "Petition") and hereby moves the Court for the entry of an order substantially in the form annexed hereto as Exhibit "A" (the "Proposed Order") pursuant to sections 105(a), 1507(a), 1509(b), 1515, 1517, 1520 and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"):

(a) granting the Petition in these cases and recognizing the Brazilian Bankruptcy Proceedings as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code,[2]

(b) recognizing the Petitioner as the "foreign representative," as defined in section 101(24) of the Bankruptcy Code, in respect of the Brazilian Bankruptcy Proceedings,

(c) giving full force and effect in the United States to the Brazilian Reorganization Plan and the Brazilian Confirmation Order (each as defined below),

(d) authorizing and directing (i) Deutsche Bank Trust Company Americas (the "Indenture Trustee"), in its capacity as the indenture trustee under that certain indenture dated as of May 7, 2013 (the "Indenture") relating to the issuance of the 10.125% senior notes due 2020 (the "Notes") in the aggregate principal amount of US$250 million issued by Aralco Finance S.A. ("Aralco Finance") and guaranteed by the certain other Debtors; (ii) the Depository Trust Company (the "DTC"), in its capacity as the record holder of the Notes; and (iii) and any other

[2] In the event that the Court declines to recognize the Brazilian Bankruptcy Proceeding in respect of Aralco Finance as a foreign main proceeding, the Petitioner requests that this court enter an order that recognizes such Brazilian Bankruptcy Proceeding as a foreign nonmain proceeding.

parties necessary to effectuate the relief requested herein, to take any and all actions necessary to give effect to the terms of the Brazilian Reorganization Plan,

(e) permanently enjoining all persons from commencing or taking any action in the United States to obtain possession of, exercise control over, or assert claims against the Debtors or their property, and

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

In support of this Motion, the Petitioner refers the Court to the statements contained in (A) the *Declaration of Ricardo Costa Villela in Support of (I) the Foreign Representative's Petition for Recognition of Brazilian Bankruptcy Proceeding and Motion for Order Granting Related Relief and (II) Certain Related Relief* (the "Petitioner Declaration") [ECF No. 4] and (B) the *Declaration of Joel Luis Thomaz Bastos as Brazilian Counsel to the Debtors* (the "Brazilian Counsel Declaration") [ECF No. 5], which were filed concurrently herewith and incorporated herein by reference. In addition, concurrently herewith, the Foreign Representative has filed the *Foreign Representative's Motion for an Order Directing the Joint Administration of the Chapter 15 Cases of ARALCO S.A. - Indústria e Comércio and its Affiliates Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 1015(b)* (the "Joint Administration Motion") [ECF No. 2] requesting that the Court enter an order directing the joint administration of the Chapter 15 Cases (as defined in the Joint Administration Motion). In further support of the relief requested herein, the Petitioner respectfully represents as follows:

## Preliminary Statement

The Debtors are producers of sugar and ethanol with their operations located in the State of São Paulo, Brazil. As a result of pricing instability, Brazilian currency devaluation and poor harvests caused by climate issues, on February 28, 2014, the Debtors commenced their Brazilian

Bankruptcy Proceedings pursuant to Federal Law No. 11.101 of February 9, 2005 (the "Brazilian Bankruptcy Law"). After several months of negotiations with their creditors, the Debtors submitted their joint plan of reorganization on July 14, 2014 (as amended, the "Brazilian Reorganization Plan").

On December 8, 2014, at a court-supervised meeting of creditors, the Brazilian Reorganization Plan was overwhelmingly approved by the Debtors' creditors (including the members of an ad hoc group of noteholders consisting principally of creditors located in the United States). Of those creditors who attended such meeting, creditors holding 94.89% of the unsecured credits (by value), 100% of the secured credits, 100% of the labor credits and 93.75% of the small businesses company credits voted to approve the Brazilian Reorganization Plan. Shortly thereafter, the Brazilian Bankruptcy Court entered an order approving the Brazilian Reorganization Plan that was published on January 23, 2015 (the "Brazilian Confirmation Order").

The Brazilian Confirmation Order and the Brazilian Reorganization Plan are in full force and effect and have not been stayed by any court. In fact, the Brazilian Court of Appeals of the State of São Paulo has denied all requests to stay the Brazilian Confirmation Order pending resolution of the interlocutory appeals against the Brazilian Confirmation Order filed by six creditors and a minority shareholder based in Brazil.

The Debtors' contacts with the United States include the private placement by Aralco Finance of US$250 million of U.S.-dollar-denominated Notes, which are governed by New York law and guaranteed by five of the other Debtors. The Brazilian Reorganization Plan provides for each holder of the Notes to receive, in full satisfaction of its claims, its pro rata share of (i) new secured notes in the principal amount equal to 40% of the face amount of the existing Notes and

(ii) new secured notes (which will contain a convertible feature allowing for the holders to convert them into equity in the Debtors' new holding company, New Aralco) in the principal amount equal to 60% of the face amount of the existing Notes. The new notes will be guaranteed by all of the Debtors and New Aralco, denominated in U.S. dollars and governed by U.S. law.

The Petitioner, on behalf of the Debtors, commenced these chapter 15 cases to complete the restructuring contemplated under the Brazilian Reorganization Plan, as the Brazilian Reorganization Plan requires that the Petitioner commence these cases to ensure that the restructuring is binding upon all holders of the Notes, which are denominated in U.S. dollars and governed by the laws of New York. To this end, Petitioner seeks to obtain relief from this Court so as to (i) recognize the Brazilian Bankruptcy Proceedings as foreign main proceedings (as defined in section 1502(4) of the Bankruptcy Code), (ii) facilitate the issuance of the new notes to the Noteholders and the cancellation of the existing Notes, as contemplated by the Brazilian Reorganization Plan, (iii) grant full force and effect and comity to the Brazilian Confirmation Order, and (iv) permanently enjoin all persons from taking any action in the United States to obtain possession of, exercise control over, or assert claims against the Debtors or their property in contravention of the Brazilian Reorganization Plan and the Brazilian Confirmation Order.

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to sections 157 and 1334 of title 28 of the United States Code, as well as the Amended Standing Order of Reference 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.) (the "Amended Standing Order").

2. This case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a verified petition for recognition of the Brazilian Bankruptcy Proceeding pursuant to section 1515 of the Bankruptcy Code. This is a core proceeding pursuant to section 157(b)(2)(P) of title 28 of the United States Code.

3. Venue is proper in this Court pursuant to sections 1410(1) and 1410(3) of title 28 of the United States Code.

4. The statutory predicates for the relief requested herein are sections 105(a), 1507(a), 1509(b), 1515, 1517, 1520 and 1521 of the Bankruptcy Code.

## Background

### A. The Debtors' Businesses

5. The Debtors are leading low-cost producers of sugar and ethanol, operating four mills (Aralco, Alcoazul, Generalco and Figueira) located within close proximity to one another in the State of São Paulo, Brazil. Each of the Debtors is incorporated under the laws of Brazil, except Aralco Finance, which is incorporated under the laws of Luxembourg. Each of the Debtors maintains its principal place of business in the city of Santo Antônio do Aracanguá, State of São Paulo, Brazil. The Debtors do not assert that they have a domicile in the United States. Petitioner Decl. at ¶12.

6. Substantially all of the Debtors' assets are located in Brazil. As of the date hereof, the Debtors' sole property in the United States is a joint interest in an undrawn retainer with White & Case LLP, the Debtors' U.S. counsel in connection with the filing of these chapter 15 cases. That retainer is held in an interest-bearing client trust account with Citibank in the Borough of Manhattan in the City of New York, New York (the "Client Trust Account"). Pursuant to the terms of an engagement letter between the Debtors and White & Case LLP dated October 13, 2014, Figueira Indústria e Comércio S.A. (on behalf of each of the Debtors)

deposited USD$49,943.20 in White & Case LLP's general trust account with Citibank which is also located in the Borough of Manhattan in the City of New York, New York on February 2, 2015. Such funds were then transferred to the Client Trust Account and remain in the Client Trust Account as of the date hereof. White & Case LLP is only permitted to apply the funds in the Client Trust Account to outstanding invoiced amounts with the prior written consent of the Debtors. The Debtors are the beneficiaries of all interest that accrues on the funds in the Client Trust Account. Petitioner Decl. at ¶ 13.

**B. Summary of the Debtors' Debt Structure**

7. Under the Indenture, Aralco Finance privately placed the 10.125% Notes due in 2020 in the aggregate principal amount of US$250,000,000 in an offering that was exempt from registration under SEC Rule 144A and Regulation S. Aralco S.A. and four of its operating subsidiaries – Destilaria Generalco S.A., Figueira Indústria e Comércio S.A., Alcoazul S.A. – Açúcar e Álcool and Agral S.A. – Agrícola Aracangúa – have guaranteed the Notes. The Notes are general, unsecured obligations of Aralco Finance and each of the guarantors and are pari passu with such Debtors' other unsecured obligations. Petitioner Decl. at ¶ 14.

8. Deutsche Bank Trust Company Americas acts as the Indenture Trustee, Registrar, Transfer Agent and New York Paying Agent for the Notes, whereas Deutsche Bank Luxembourg S.A. acts as the Irish Paying Agent for the Notes. Petitioner Decl. at ¶ 15.

9. The Debtors have total debt of approximately R$1.67 billion. Included in this amount are approximately R$160 million in tax liabilities and R$400 million in other fiscal liabilities, which, as a matter of law, are not subject to treatment in the Brazilian Bankruptcy Proceedings or the Brazilian Reorganization Plan. The Debtors have labor debts of approximately R$11 million, secured debts of approximately R$580 million and unsecured debts

of approximately R$520 million, including the US$250 million of Notes.[3] Petitioner Decl. at ¶ 16. Such labor, secured and unsecured debts are restructured under the Brazilian Reorganization Plan, as further described below.

### C. Events Precipitating Commencement of the Brazilian Bankruptcy Proceeding

10. Despite the Debtors' prominent position in Brazil's sugar and ethanol market, adverse conditions beyond their control have recently impaired their financial health. The Debtors' business has suffered from the low productivity of recent harvests due to a persistent drought in the São Paulo region and the lack of sufficient investments. The Debtors have also been impacted by pricing instabilities, which have been caused primarily by the Brazilian government's actions to control inflation in Brazil by artificially depressing fuel prices. Finally, the Debtors were severely affected by the Brazilian currency rate devaluation, which increased its relative indebtedness substantially. Petitioner Decl. at ¶ 17.

### D. The Brazilian Bankruptcy Proceedings

11. In light of the above factors, on February 28, 2014, the Debtors filed voluntary bankruptcy petitions in the Brazilian Bankruptcy Court, thus commencing the Brazilian Bankruptcy Proceedings. Petitioner Decl. at ¶ 18

12. On May 9, 2014, the Brazilian Bankruptcy Court issued a decision approving the commencement of the joint reorganization proceeding of the Debtors. Id.

13. In the course of the judicial reorganization, several of the Noteholders formed an ad hoc group (the "Ad Hoc Group") and retained separate counsel in Brazil. The members of the Ad Hoc Group (who are primarily based in the United States) also obtained authorization from the Brazilian Bankruptcy Court for certain of its members to attend and vote

[3] The Debtors' indebtedness is comprised of amounts in Brazilian Reais (R$) and U.S. dollars. As of February 17, 2015, R$100 is equal to approximately USD$35.34.

at the court-supervised creditors' meetings, independently of the Indenture Trustee. Pursuant to the Indenture, the Indenture Trustee was not permitted to vote on the Brazilian Reorganization Plan on behalf of Noteholders. Upon a joint motion of the Indenture Trustee and the Debtors, the Brazilian Bankruptcy Court entered an order providing that the individual Noteholders could cast their votes on the Brazilian Reorganization Plan in their own names. Petitioner Decl. at ¶ 19

**1. The Brazilian Restructuring Plan Is Overwhelmingly Approved**

14. As explained in more detail in the Brazilian Counsel Declaration and below, the Brazilian Bankruptcy Law provides that creditors must vote on a plan of reorganization at a court-supervised meeting of creditors. Moreover, under the Brazilian Bankruptcy Law, stakeholders are split into four classes: labor, small businesses company creditors, secured creditors, and unsecured creditors. To approve a plan, a majority in number of labor and small businesses company creditors, and a majority in number and of the principal amount of the claims in unsecured and secured classes, must vote to accept the plan at the meeting of creditors.

15. On July 14, 2014, the Debtors presented the Brazilian Bankruptcy Court with the Brazilian Reorganization Plan, which was amended during the first court supervised meeting of creditors on December 3, 2014. Such meeting was suspended until December 8, 2014, when both the Debtors and the creditors gathered again to provide for minor changes to, and vote on, the Brazilian Reorganization Plan. The Debtors' creditors actively participated in negotiations of the terms of the Brazilian Reorganization Plan, and the Debtors and their advisors provided extensive financial analysis and disclosure to aid the process. Petitioner Decl. at ¶ 20.

16. The Brazilian Reorganization Plan was then overwhelmingly approved by the vast majority of creditors, in what is considered the most successful vote on a reorganization

plan in the Brazilian sugar and ethanol sector. Petitioner Decl. at ¶ 22.

**2. The Key Terms of the Brazilian Reorganization Plan**

17. In general, the Brazilian Reorganization Plan[4] provides for: (i) the corporate and operational restructuring of the Debtors; (ii) a process to market and approve the sale of certain assets to raise funds to promote the growth of the Debtors and the payment of creditors; (iii) new payment terms for the Debtors' debts; and (iv) the possible conversion of unsecured debts into equity, with the consequential dilution of the holdings of current shareholders. Petitioner Decl. at ¶ 23.

18. The Debtors' corporate and operational restructuring is premised upon the creation of New Aralco, which will be formed as the Debtors' holding company and responsible for conducting the Debtors' operations. New Aralco will be governed by a board of directors whose members will be appointed by the shareholders with the approval of the Debtors' creditors, pursuant to the terms set forth in the Brazilian Reorganization Plan. The Brazilian Reorganization Plan also provides for the establishment of an "Advisory Group" of seven (7) members to make strategic decisions concerning the Debtors. In general, four (4) of the members of the Advisory Group will be appointed by unsecured creditors (who hold the vast majority of the Debtors' debt), one (1) member will be appointed by secured creditors, one (1) member will be appointed by a syndicated group of banks if it acquires certain of the Debtors' assets as contemplated under the plan, and one (1) member will be appointed by shareholders. Petitioner Decl. at ¶ 24.

19. At its core, the Brazilian Restructuring Plan provides for the payment, at face amount, of the claims of all classes of creditors and permits the Debtors' creditors to

[4] A copy of the Brazilian Reorganization Plan from the electronic judicial files of the Brazilian Bankruptcy Court attached to the Petitioner Declaration as Exhibit "C," along with a certified translation from Portuguese to English attached thereto as Exhibit "D."

participate in the management and operations of the Debtors. For instance, the Brazilian Reorganization Plan provides for each holder of the Notes to receive, in full satisfaction of its claims, its pro rata share of (i) new secured notes in the principal amount equal to 40% of the existing Notes and (ii) new secured notes (which will contain a convertible feature allowing for the holders to convert them into equity in the Debtors' new holding company, New Aralco (discussed below)) in the principal amount equal to 60% of the existing Notes. The new notes will be guaranteed by all of the Debtors and New Aralco, denominated in U.S. dollars and governed by U.S. law, and are expected to be governed by transfer restrictions like those in the Notes. Petitioner Decl. at ¶ 25.

20. The second tranche of new secured notes to be issued in connection with the Brazilian Reorganization Plan (in respect of 60% of the face value of the existing Notes) to the Noteholders will have a convertible feature, which will allow their holders to convert such portion of the face value of their debt into equity of New Aralco pursuant to the terms set forth in the Brazilian Reorganization Plan. The Debtors' unsecured creditors other than the Noteholders may also receive a convertible instrument in respect of 60% of the face value of their debt. Collectively, these convertible instruments to be issued to the Noteholders and the other unsecured creditors give the right to their holders to convert their debt into up to a total of 74% of the equity in New Aralco. To the extent such conversion rights are exercised, the Debtors' existing shareholders will be diluted proportionately. In the event that the Noteholders and other unsecured creditors do not exercise such conversion rights, they will receive cash payments over time, as set forth in the Brazilian Reorganization Plan. The Brazilian Reorganization Plan also provides that unsecured creditors will benefit from accelerated payments on part of their reorganized debts to the extent the Debtors generate excess cash in the 2015 and 2016 crop

years. Petitioner Decl. at ¶ 26.

**3. The Brazilian Reorganization Plan and the Chapter 15 Relief**

21. As previously mentioned, the Brazilian Court of Appeals of the State of São Paulo has denied all requests for injunctions that would stay the Brazilian Confirmation Order requested in connection with the appeals of the Brazilian Confirmation Order. Therefore, the Brazilian Confirmation Order and Brazilian Reorganization Plan are in full force and effect and have not been stayed by any court.

22. The approved Brazilian Reorganization Plan contemplates the filing of these chapter 15 cases within 30 days after the publication of the Brazilian Confirmation Order (i.e., by February 22, 2015). See Brazilian Reorganization Plan at § 1.2.12 ("Chapter 15: Bankruptcy auxiliary process to be filed, by Aralco Group, before the Bankruptcy Court for the Southern District of New York, according to Chapter 15 of Title 11 of United States Code, intended to grant effectiveness for the plan in the territory of the United States."). See also Brazilian Reorganization Plan at § 14.5.4 ("Aralco Group shall file Chapter 15 within thirty (30) days after Plan Judicial Homologation, aiming to grant effects to the Plan in US territory, bounding Bondholders there resident or based.").

23. Therefore, in order to fulfill this requirement of the Brazilian Reorganization Plan, on February 13, 2015, by power of attorney (the "Power of Attorney") signed by authorized representatives of each of the Debtors, the Debtors duly appointed Ricardo Costa Villela, a member of the board of directors of Aralco Finance and the head of human resources for Aralco, as their foreign representative. Petitioner Decl. at ¶ 11.

**Relief Requested**

24. The Petitioner requests that this Court enter an order, substantially in the form of the Proposed Order attached hereto and pursuant to sections 105(a), 1507(a), 1509(b),

1515, 1517, 1520, 1521 the Bankruptcy Code, that:

a) grants the Petition in this case and recognizes the Brazilian Bankruptcy Proceedings as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code;[5]

b) recognizes the Petitioner as the "foreign representative" of the Debtors as defined in section 101(24) of the Bankruptcy Code in respect of the Brazilian Bankruptcy Proceedings;

c) gives full force and effect and grants comity in the United States to the Brazilian Confirmation Order;

d) authorizes and directs the Indenture Trustee and the DTC to take any and all actions necessary to give effect to the terms of the Brazilian Reorganization Plan;

e) permanently enjoins all parties from commencing or taking any action in the United States to obtain possession of, exercise control over, or assert claims against the Debtors or their property; and

f) grants such other and further relief as the Court deems just and proper.

## Basis for Relief

### A. The Court Should Recognize the Brazilian Bankruptcy Proceedings as Foreign Main Proceedings and the Petitioner as their Foreign Representative

25. 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 11 U.S.C. § 1517; In re Oversight & Control Comm'n of Avánzit, S.A., 385 B.R. 525, 532 (Bankr. S.D.N.Y. 2008). As explained below, venue in this District is proper, and the Brazilian Bankruptcy Proceedings, the Petitioner and this Petition satisfy all of the requirements of section 1517(a). The Debtors are eligible to be debtors under chapter 15 of the Bankruptcy

[5] In the event that the Court declines to recognize the Brazilian Bankruptcy Proceeding in respect of Aralco Finance as a foreign main proceeding, the Petitioner requests that this court enter an order that recognizes such Brazilian Bankruptcy Proceeding as a foreign nonmain proceeding.

Code and have assets in the United States in this District in accordance with section 109(a) of the Bankruptcy Code. See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet), 737 F.3d 238 (2d Cir. 2013).

**1. The Court Has Jurisdiction to Recognize the Brazilian Bankruptcy Proceeding and Grant the Relief Requested**

26. Pursuant to sections 157(b)(2)(P) and 1334 of title 28 of the United States Code and the Amended Standing Order, the Court has jurisdiction to hear and determine chapter 15 cases.

27. Venue is also proper in this District. As described above, the Debtors' sole property in the United States are the funds held in the Client Trust Account located in New York, New York. Thus, the Debtors' principal assets in the United States are located in this district and, accordingly, venue is proper here. 28 U.S.C. § 1410(1). The Debtors have no employees or operations in the United States and are not a party to any lawsuits in the United States. The Debtors have no United States affiliates or equity-holders. The Debtors' principal connection to the United States is that Aralco Finance issued the Notes pursuant to the Indenture, which is governed by New York law and guaranteed by the other Debtors. Aside from the holders of the Notes, many of whom are sophisticated financial institutions with offices in New York, and Deutsche Bank Trust Company Americas, the Indenture Trustee, which is on the Debtors' knowledge and belief headquartered in New York, the Debtors are aware of no other creditors located in the United States. Furthermore, because of the proximity to the Court of the Debtors' United States creditors and United States counsel, the existence of the Notes governed by New York law, and the fact that the Debtors are not a party to litigation in any other United States jurisdiction, the Debtors believe that the interests of justice are served by establishing venue in this District. 28 U.S.C. § 1410(3). Accordingly, the Petitioner respectfully submits that

venue in this District is consistent with the interests of justice and the convenience of the parties and is proper pursuant to sections 1410(1) and 1410(3) of title 28 of the United States Code.

**2. The Brazilian Bankruptcy Proceedings Are Foreign Main Proceedings**

28. With respect to each of the Debtors, the Brazilian Bankruptcy Proceeding[6] is a "foreign main proceeding" as defined in section 1502(4) of the Bankruptcy Code.

29. First, the Brazilian Bankruptcy Proceedings satisfy the general definition of "foreign proceeding" as set forth in section 101(23) of the Bankruptcy Code.[7] 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." 11 U.S.C. § 1502(3). Because they are judicial proceedings brought under the Brazilian Bankruptcy Law and supervised by the Brazilian Bankruptcy Court, the Brazilian Bankruptcy Proceedings fit squarely within the Bankruptcy Code's definition of a "foreign proceeding."

30. Bankruptcy courts, including this Court, have specifically held that restructuring proceedings under the Brazilian Bankruptcy Law and other Brazilian insolvency laws are foreign proceedings. See, e.g., In re SIFCO S.A., No. 14-11179 (REG) [Docket No. 38]

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[6] On May 9, 2014, the Brazilian Bankruptcy Court entered an order authorizing the commencement of the Brazilian Bankruptcy Proceeding pursuant to the Brazilian Bankruptcy Law (the "Commencement Order"), a certified copy of which is attached to the Petitioner Declaration as Exhibit "A" and a certified translation of which is attached to the Petitioner Declaration as Exhibit "B".

[7] '"[F]oreign proceeding' means a collective judicial . . . proceeding in a foreign country . . . under a law relating to insolvency or adjustment of debt [in which] the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization." 11 U.S.C. § 101(23).

(Bankr. S.D.N.Y. Oct. 23, 2014) (recognizing as a foreign main proceeding a case filed pursuant to the in-court reorganization section of the Brazilian Bankruptcy Law); In re Rede Energia S.A., No. 14-10078 (SCC) [Docket No. 18] (Bankr. S.D.N.Y. March 6, 2014) (same); Centrais Elétricas Do Pará S.A., No. 12-14568 (SCC) [Docket No. 19] (Bankr. S.D.N.Y. Dec. 12, 2012) (same); In re Independência S.A., No. 09-10903 (SMB) [Docket No. 23] (Bankr. S.D.N.Y. Mar. 26, 2009) (same); In re Varig Logística S.A., No. 09-15717 (RAM) [Docket No. 77] (Bankr. S.D. Fla. May 11, 2009) (same). See also In re ITSA Intercontinental Telecomunicações Ltda., No. 08-13927 (ALG) [Docket No. 16] (Bankr. S.D.N.Y. Jan. 29, 2009) (recognizing a foreign Brazilian bankruptcy proceeding that confirmed a pre-negotiated plan of reorganization); In re Enco Zolcsak Equipamentos Industriais Ltda., No. 11-22924 (AJC) [Docket No. 15] (Bankr. S.D. Fla. July 12, 2011); In re Transbrasil S.A. Linhas Aéreas, No. 11-19484 (AJC) [Docket No. 9] (Bankr. S.D. Fla. May 11, 2011); In re Banco Santos, S.A., No. 10-47543 (LMI) [Docket No. 9] (Bankr. S.D. Fla. Jan. 13, 2011); In re Fazendas Reunidas Boi Gordo, S.A., No. 09-37116 (AJC) [Docket No. 7] (Bankr. S.D. Fla. Jan. 11, 2010).

31. Second, each of the Brazilian Bankruptcy Proceedings 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). To determine a debtor's COMI, the Court of Appeals for the Second Circuit recently held that "the relevant principle . . . is that the COMI lies where the debtor conducts its regular business, so that [it] is ascertainable by third parties. . . .

Among other factors that may be considered are the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes." Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 130 (2d Cir. 2013). See also In re British Am. Ins. Co. Ltd., 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 Miguel Virgos & Etienne Schmit, The Report on the Convention on Insolvency Proceedings).

32. In addition to qualifying as a "foreign proceeding" under section 101(23), each Brazilian Proceeding qualifies as a "foreign main proceeding," which is defined in the Bankruptcy Code as "a foreign proceeding pending in the country where the debtor has the center of its main interests." See 11 U.S.C. § 1502(4). See also 11 U.S.C. § 1517(b)(1) (providing that an order of recognition of a foreign main proceeding shall be entered if the foreign proceeding that is subject to the petition "is pending in the country where the debtor has the center of its main interests").

33. The relevant time period to consider in determining the location of a debtor's COMI is the date on which the chapter 15 petition was filed, though "[a] court may consider the period between the commencement of the foreign proceeding and the filing of the Chapter 15 petition to ensure that a debtor has not manipulated its COMI in bad faith . . . ." Fairfield Sentry, 714 F.3d at 137.

34. The Bankruptcy Code neither defines nor provides a conclusive test for determining the location of a debtor's COMI. There is a statutory presumption that a debtor's "registered office" is its COMI "in the absence of evidence to the contrary," 11 U.S.C. § 1516(c),

yet the legislative history makes clear that this presumption is rebuttable and that the rule of the "registered office," i.e., "place of incorporation," is "designed to make recognition as simple and expedient as possible" in cases where the facts are not controversial rather than to establish a conclusive presumption. H.R. REP. No. 109-31, pt. 1, at 112-13 (2005). Thus, the court in In re Bear Stearns observed that:

> This presumption permits and encourages fast action in cases where speed may be essential, while leaving the debtor's true 'center' open to dispute in cases where the facts are more doubtful. . . . This presumption is not a preferred alternative where there is a separation between a corporation's jurisdiction of incorporation and its real seat. Chapter 15 changed the Model Law standard that established the presumption in "the absence of proof to the contrary," to a presumption in "the absence of evidence to the contrary." The legislative history explains that the word "proof" was changed to "evidence" to make it clearer using United States terminology that the ultimate burden is on the foreign representative. . . . [W]hatever may be the proper interpretation of the EU Regulation, the Model Law and Chapter 15 give limited weight to the presumption of jurisdiction of incorporation as the COMI.

In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 128 (Bankr. S.D.N.Y. 2007) (emphasis supplied, internal citations omitted); see also In re Tri-Cont'l Exch. Ltd., 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006) (similar view). Accordingly, because of the "evidence to the contrary" presented herein, the presumption is not applicable to this case. See Collins v. Oilsands Quest Inc., 484 B.R. 593, 595 (S.D.N.Y. 2012).

35. The Court of Appeals for the Second Circuit recently held that "the relevant principle [to determine a debtor's COMI] is that the COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties. . . . Among other factors that may be considered are the location of headquarters, decision-makers, assets, creditors, and the law applicable to most disputes." Fairfield Sentry, 714 F.3d at 130 (deriving the principle by reference to foreign law cited below). See also Oilsands Quest, 484 B.R. at 596 ("[A] company's center of main interests should be ascertainable by third parties."); British Am.

Ins. Co., 425 B.R. at 912 ("The location of a debtor's COMI should be readily ascertainable by third parties."); In re Ran, 390 B.R. at 266 ("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 Miguel Virgos & Etienne Schmit, The Report on the Convention on Insolvency Proceedings); Bondi v. Bank of Am., N.A. (In re Eurofood IFSC Ltd.), Case 341/04, 2006 WL 1142304, at ¶¶ 35-35. (E.C.J. May 2, 2006) (stating that the center of a debtor's main interests must be identified based on criteria that are: (1) objective and (2) ascertainable by third parties, and that the statutory presumption that it be identified with the debtor's registered office could be rebutted if such criteria allowed for the establishment that the debtor's registered office was nothing more than a "letterbox" company not carrying out any business in the location in which its registered office is situated); In re Stanford Int'l Bank Ltd., [2010] EWCA (Civ) 137, [53]-[56] (Eng.) (following Eurofood and holding that the presumption that the location of the registered office is the COMI can be rebutted only by factors that are objective and ascertainable by third parties, and noting that such factors must be in the public domain, that a third party would learn such facts in the course of dealing with the company and that any matters that "would need to be obtained by enquiry were irrelevant to determining COMI").

36. As noted above and recently endorsed in Fairfield Sentry, in interpreting chapter 15 (in this context, a debtor's COMI), a court is to "consider its international origin, and the need to promote an application of [chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C. § 1508; Fairfield Sentry, 714 F.3d at 136 (citing European Council Regulation No. 1346/2000 of 29 May 2000 and European court decisions). See also Tri-Cont'l Exch., 349 B.R. at 633 (noting that examination of the term

"center of main interests" must include consideration of similar statutes adopted by foreign jurisdictions pursuant to section 1508); Lavie v. Ran, 406 B.R. 277, 281 (S.D. Tex. 2009) ("Likewise, statutes, cases, and interpretive materials of the European Union are also instructive.").

37. Some courts have held that an entity's "principal place of business" is that entity's COMI. Tri-Cont'l Exch., 349 B.R. at 634. The Court of Appeals for the Second Circuit has refused to adopt any dogmatic view absent a statutory definition, but, while it rejected the assertion that the "principal place of business" concept had any bearing in determining the relevant time to consider the location of a debtor's COMI, it noted that the concept might be useful in adducing factors that point to the location of a debtor's COMI. Fairfield Sentry, 714 F.3d at 136. Two tests are commonly employed to determine a corporation's principal place of business:

> The "nerve center" test defines the principal place of business as the nerve center from which a corporation radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objective. Under this test, courts focus on those factors that identify the place where the corporation's overall policy originates. The other test has been labeled the "place of operations" or "locus of operations" test. There, the effort is to identify the place in which a corporation conducts its principal operations. Courts generally apply the "nerve center" test when a corporation's operations are geographically widespread, and the "locus of operations" test when a corporation is centralized. Regardless of which is the more appropriate test, and they are much the same, the case law makes it clear that judges should not be straightjacketed by the formal requirements of each test, but rather should adapt the tests to the facts of each case. A flexible approach is appropriate where the facts do not fall neatly within the parameters of either the "nerve center" or the "locus of operations" analysis.

Phoenix Four Inc. v. Strategic Res. Corp., 446 F. Supp. 2d 205, 214-15 (S.D.N.Y. 2006) (internal citations and quotations omitted). See also In re Tradex Swiss AG, 384 B.R. 34, 43 (Bankr. D. Mass. 2008).

38. The COMI for the Debtors' enterprise is the City of Santo Antônio do

Aracanguá, State of São Paulo, Brazil. The Debtors are operationally and functionally centered in the State of São Paulo, largely organized under centralized senior management in the State of São Paulo, and subject to combined cash management and accounting functions, all of which are based in the State of São Paulo. Petitioner Decl. ¶ 32. Indeed, with the exception of Aralco Finance (which is discussed further below), the remaining Debtors have the following connections to Brazil:

(a) all of the Debtors' operations are managed and directed from its head office in the State of São Paulo and are carried out in the State of São Paulo;

(b) corporate governance for the Debtors is directed from the State of São Paulo, Brazil;

(c) in-person meetings of the Debtors' boards of directors are typically held in the State of São Paulo, Brazil;

(d) a majority of the members of the Debtors' boards of directors maintain their offices in the State of São Paulo, Brazil;

(e) strategic and key operating decisions and key policy decisions for the Debtors are made by staff located in the State of São Paulo, Brazil;

(f) the Debtors' corporate accounting, accounts payable, insurance procurement, accounts receivable, financial planning, internal auditing, marketing, treasury, real estate, research and development and tax services are provided in the State of São Paulo, Brazil;

(g) the Debtors' finance, legal, human resources, payroll, billing, freight management, procurement and engineering services are carried out in the State of São Paulo, Brazil;

(h) the Debtors' cash management functions are maintained and directed from the State of São Paulo, Brazil;

(i) key information technology and systems used by the Debtors are provided from the State of São Paulo, Brazil;

(j) management and senior staff of the Debtors regularly attend meetings in the State of São Paulo, Brazil;

(k) a manager that oversees financial management of the Debtors is based in the State of São Paulo, Brazil;

(l) capital expenditure decisions affecting the Debtors are managed in the State of São Paulo, Brazil;

(m) the majority of the Debtors' creditors, both in number and amount, (excepting the Noteholders) are located in Brazil; and

(n) the Debtors' equity holders are located in Brazil.

Id. Accordingly, it is beyond dispute that the center of main interests for each of these Debtors is in Brazil.

39. Additionally, although Aralco Finance is incorporated in Luxembourg, both its "nerve center" and "locus of operations" have been in Brazil since before the commencement of the Brazilian Bankruptcy Proceedings and have remained there as of the date hereof.

40. Moreover, the existence of Aralco Finance's center of main interests in Brazil has been public and therefore ascertainable by creditors and third parties, based upon the following:

(a) while Aralco Finance holds its registered office in Luxembourg, which the Debtors understand it is required to do as a technical matter of Luxembourg law, it is only permitted to engage in activities related to the financing of Aralco S.A., its parent located in Brazil;

(b) Aralco Finance has two directors, both of whom reside in Sao Paolo, Brazil;

(c) each of the guarantors of the Notes is incorporated in Brazil and all of the members of their boards of directors and executive officers reside in Brazil;

(d) all or substantially all negotiations regarding the Brazilian Proceeding and the restructuring of the Notes issued by Aralco Finance, including those with the Ad Hoc Group, have occurred in Brazil;

(e) while originals of Aralco Finance's statutory books, records and corporate documents are kept in Luxembourg, copies of all such documents are kept in Brazil; and

(f) all of the documents submitted in the Brazilian Bankruptcy Proceedings have been issued on behalf of all of the Debtors, including Aralco Finance.

Petitioner Decl. at ¶ 34.

41. For the reasons set forth above, most of Aralco Finance's creditors would objectively consider Aralco Finance to be conducting the administration of its affairs from Brazil. Moreover, apart from some minor tax obligations owed to the government of Luxembourg and the lease for its registered office, Aralco Finance does not appear to have obligations owing to Luxembourg creditors, except to the extent that any such Luxembourg creditors happen to be among the beneficial holders of the Notes or other financial indebtedness. Petitioner Decl. at ¶ 35. Indeed, Aralco Finance has no suppliers and the only service contractor providing it services in Luxembourg is its domicile agent. Id. In short, Aralco Finance is a classic "letterbox" company, operationally and functionally integrated into a larger enterprise, the Aralco Group, whose headquarters, head-office functions and COMI are located in Brazil.

42. Indeed, even in chapter 15 cases involving U.S. debtors – including those with significant U.S. operations (not mere "letterbox" companies, as here) – courts have found the debtors' COMI to be located where the head-office functions and major decision-making occurred: at the place where senior management for the entire corporate group was located, which was outside of the United States. As one bankruptcy judge remarked:

> Regarding the COMI issue, I've seen practically the same scenario at least on two other occasions in the last few years where the number and activity of the Canadian debtors outweighs the number and activity of the U.S. debtors, and where the shots that are called come out of Canada, not the United States. And I think it's a very conventional recognition that I'll approve.

In re Catalyst Paper Corp., No. 12-10221 (PJW) (Bankr. D. Del. Jan. 17, 2012), Hr'ng. Transcript at 28 [Docket No. 92]. Other cases in which orders recognizing the foreign main proceedings of U.S. incorporated members of multinational corporate groups include In re

Oilsands Quest Inc., No. 12-10476 (MGG) (Bankr. S.D.N.Y. Feb. 7, 2012)[8]; In re CPI Plastics Grp Ltd., No. 09-20175 (JES) ( Bankr. E.D. Wis. Feb. 20, 2009); In re Big Nevada Inc., Case No. 09-13569 (SJS) (Bankr. W.D. Wash. Apr. 15, 2009); In re ROL Manufacturing (Canada) Ltd., No. 08-31022 (LSW), (Bankr. S.D. Ohio Mar. 7, 2008); In re Madill Equipment Canada, No. 08-41426 (PBS) (Bankr. W.D. Wash. Apr. 1, 2008); In re MAAX Corp., No. 08-11443 (CSS) (Bankr. D. Del. Jul. 14, 2008); and In re Shermag Inc., No. 08-12015 (Bankr. M.D. N.C. Dec 10, 2008).

43. Finally, the Brazilian Court accepted that Brazil has jurisdiction over all the Debtors, including Aralco Finance. See Commencement Order at 4297-98.

44. In summary, Aralco Finance, although incorporated outside of Brazil and holding a registered office outside of Brazil (which the Debtors understand is required under Luxembourg Law) has conducted its administration and decision-making from Brazil at all relevant times. The limited purpose nature of Aralco Finance as a financing vehicle for Aralco S.A. and the fact that all of the guarantors of the Notes, where all the value available to satisfy Aralco Finance's obligations lies, are in Brazil additionally shows that its creditors that are paying attention should be aware that Brazil is Aralco Finance's COMI. For all of the reasons set forth above, the Brazilian Proceeding of Aralco Finance is, and should be recognized as, the foreign main proceeding of Aralco Finance.[9]

45. Other than these chapter 15 cases and the Brazilian Bankruptcy

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[8] Collins v. Oilsands Quest Inc., 484 B.R. 593 (S.D.N.Y. 2012) (granting recognition as foreign main proceeding notwithstanding Oilsands Quest Inc.'s incorporation in the U.S.).

[9] In the event that the Court declines to recognize the Brazilian Bankruptcy Proceeding in respect of Aralco Finance as a foreign main proceeding, the Petitioner requests that this court enter an order that recognizes such Brazilian Bankruptcy Proceeding as a foreign nonmain proceeding. A court may grant recognition of a foreign proceeding pending in a foreign country where the debtor has an establishment. See 11 U.S.C. §§ 1517(b)(2). An establishment is "any place of [the debtor's] operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. §1502(2). Based on the above stated facts, the Petitioner submits that Aralco Finance has an establishment in Brazil and, therefore, if the court determines that the Brazilian Bankruptcy Proceeding in respect of Aralco Finance is not a foreign main proceeding, that it constitutes a foreign nonmain proceeding.

Proceedings, the Debtors are not subject to insolvency proceedings in any jurisdiction.

46. Thus, based on the facts present in this case, the Petitioner respectfully submits that the City of Santo Antônio do Aracanguá, State of São Paulo, Brazil should be held to be the center of each of the Debtors' main interests. See In re Tri-Cont'l Exch. Ltd., 349 B.R. at 634 (noting that a debtor's COMI is the "place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties"). Accordingly, given that the Brazilian Bankruptcy Proceedings are pending in the Debtors' COMI, the Brazilian Bankruptcy Proceedings should be recognized as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

**3. The Petitioner Is a Proper "Foreign Representative"**

47. The second requirement for recognition of a foreign main proceeding under section 1517(a) of the Bankruptcy Code is that a 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).

48. Here, the Petitioner is an individual who has been duly appointed by the Debtors as their foreign representative in accordance with section 101(24) of the Bankruptcy Code and commence these chapter 15 cases.[10] As explained in the Brazilian Counsel Declaration, the Brazilian Bankruptcy Law authorizes the Debtors to administer the

[10] A copy of the executed Power of Attorney appointing Ricardo Costa Villela as the Debtors' foreign representative is attached to the Petitioner Declaration as Exhibit "G" and a certified translation to English is attached to the Petitioner Declaration as Exhibit "H".

reorganization of their assets and affairs.[11] Brazilian Counsel Decl. ¶ 11. As such, the Petitioner satisfies sections 101(24) and 1517(a)(2) of the Bankruptcy Code. See In re Vitro, S.A.B. de C.V., 470 B.R. 408 (Bankr. N.D. Tex.) (holding that an individual appointed as foreign representative by the debtor's board in anticipation of a Mexican *concurso* proceeding, which contemplates "self management" during the proceeding similar to that of a debtor-in-possession, fits within the scope of the Bankruptcy Code's definition of "foreign representative," and recognizing the individual as the foreign representative).

**4. The Petition Was Properly Filed under Sections 1504 and 1509 and Meets the Requirements of Section 1515**

49. 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.

50. First, the Petitioner duly and properly commenced these chapter 15 cases in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by filing the petitions with all the documents and information required by sections 1515(b) and 1515(c). See In re Bear Stearns, 374 B.R. at 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.").

51. Second, in accordance with sections 1515(b)(1)-(2) and (d) of the Bankruptcy Code, the Petitioner has submitted evidence, translated into English, of the existence of the Brazilian Bankruptcy Proceedings and the appointment of the Petitioner as foreign

[11] Moreover, the Brazilian Reorganization Plan expressly contemplates that the Debtors commence these chapter 15 cases. See Brazilian Reorganization Plan at § 14.5.4 ("Aralco Group shall file Chapter 15 within thirty (30) days after Plan Judicial Homologation, aiming to give effect to the Plan in the U.S. territory, binding Bondholders residing or based there.").

representative thereof. See Exhibits "A" through "H" to the Petitioner Declaration (together containing copies of the Commencement Order, the Brazilian Reorganization Plan and the Brazilian Confirmation Order from the electronic judicial files of the Brazilian Bankruptcy Court and the executed Power of Attorney, along with certified translations of each from Portuguese to English).

52. Finally, in accordance with section 1515(c) of the Bankruptcy Code, the Petitioner Declaration contains a statement identifying the Brazilian Bankruptcy Proceedings as the only foreign proceedings currently pending with respect to the Debtors. See Petitioner Decl. at ¶ 41.

* * *

53. For all of the reasons set forth above, the Petitioner respectfully submits 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.[12] Thus, the Court should enter the Proposed Order attached here as Exhibit "A" recognizing the Brazilian Bankruptcy Proceedings as foreign main proceedings.

**B. Discretionary Relief under Chapter 15 of Bankruptcy Code Is Warranted and Appropriate**

54. In addition to the relief automatically provided under section 1520 of the Bankruptcy Code upon recognition of the Brazilian Bankruptcy Proceedings, the Petitioner requests that this Court provide additional relief and assistance pursuant to sections 105(a), 1507(a) and 1521(a) of the Bankruptcy Code to further the goal of orderly administration of the

[12] Upon recognition of the Brazilian Bankruptcy Proceedings as foreign main proceedings, certain relief is automatically granted as a matter of right, including a stay that enjoins actions against the Debtors and otherwise protects the Debtors. See 11 U.S.C. § 1520. In particular, upon the Court's recognition of the Brazilian Bankruptcy Proceedings as foreign main proceedings, section 1520(a)(1) of the Bankruptcy Code triggers the automatic stay provisions of section 362 of the Bankruptcy Code with respect to the Debtors.

Debtors' assets.

55. 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). Such relief may "include,"[13] among other relief, the following:

> (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) . . . ; and
>
> (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).

Id. The Court may grant relief under section 1521(a) of the Bankruptcy Code only if the interests of "the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a).

56. In granting discretionary relief, the Court may also act pursuant to section 1507 of the Bankruptcy Code to provide "additional assistance" to a foreign representative under the Bankruptcy Code or other applicable U.S. law. 11 U.S.C. § 1507(a). The legislative history of section 1507 states that the section provides authority for "additional relief" beyond that permitted under section 1521 of the Bankruptcy Code. H.R. REP. No. 109-31, pt. 1, at 109

[13] The term "including" (as set forth in section 1521(a)) is not limiting. See 11 U.S.C. § 102(3).

(2005). In exercising discretion to grant relief under section 1507(a) of the Bankruptcy Code, courts are guided by the standards set forth in section 1507(b) of the Bankruptcy Code, which provides that:

> In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—
>
> > (1) just treatment of all holders of claims against or interests in the debtor's property;
> >
> > (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
> >
> > (3) prevention of preferential or fraudulent dispositions of property of the debtor;
> >
> > (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
> >
> > (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

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).

57. As a preliminary matter, it is important to note that just last year, this Court in the chapter 15 case of Rede Energia S.A. thoroughly analyzed the substantive rules and procedural mechanisms prescribed by the Brazilian Bankruptcy Law and unequivocally found that it comported with United States' fundamental notions of fairness and granted comity and full force and effect to the order of the Brazilian bankruptcy court's confirmation order and Brazilian debtor's reorganization plan. See generally In re Rede Energia S.A., 515 B.R. 69 (Bankr. S.D.N.Y. 2014). Petitioner respectfully submits that this Court should follow the Rede Energia court and grant the discretionary relief sought here. For the reasons that follow, the Petitioner

requests that this Court assist in the implementation of the Brazilian Reorganization Plan and the Brazilian Confirmation Order by exercising its discretion under sections 105(a), 1507(a) and 1521(a) of the Bankruptcy Code.

**1. Specific Request for Additional Relief Pursuant to Sections 105(a), 1507(a) and 1521(a) of the Bankruptcy Code**

a. Assistance with Implementing the Brazilian Reorganization Plan

58. Pursuant to sections 105(a), 1507(a) and 1521(a) of the Bankruptcy Code, the Petitioner seeks additional assistance from the Court in authorizing and directing the Indenture Trustee and the DTC to carry out all administrative actions required of them pursuant to the Brazilian Reorganization Plan and Brazilian Confirmation Order or that are necessary to consummate the terms of the Brazilian Reorganization Plan and Brazilian Confirmation Order.

59. As described in the Petitioner Declaration, pursuant to the Brazilian Reorganization Plan and the Brazilian Confirmation Order, the Notes will be cancelled and two series of new notes will be issued in exchange. Such actions will invariably require the assistance of the Indenture Trustee and the DTC (i.e., the record holder of the global note representing all of the Notes). The Debtors believe that the DTC may assert that it is not subject to Brazilian Bankruptcy Court jurisdiction and, as such, may resist formally cancelling the global Note and any steps to ensure the issuance of the new notes without first obtaining an order from a U.S. court directing and authorizing such actions. To facilitate the foregoing transactions provided in the Brazilian Reorganization Plan, the Petitioner seeks assistance from the Court in authorizing and directing the Indenture Trustee and the DTC to take all actions necessary to promptly (i) issue the new notes to the beneficial owners of the Notes and (ii) memorialize and mechanically implement the cancellation of the Notes as contemplated by the Brazilian Reorganization Plan.

60. By providing this relief, the Court will give clear direction and authority under U.S. law to the Indenture Trustee and the DTC to carry out the requirements of the Brazilian Reorganization Plan in accordance with Brazilian Bankruptcy Law and the Brazilian Confirmation Order. This same relief was granted by this Court in previous chapter 15 cases involving Brazilian Debtors. See In re Rede Energia S.A., 515 B.R. at 93-94; Centrais Elétricas Do Pará S.A., No. 12-14568 (SCC) [Docket No. 19] (Bankr. S.D.N.Y. Dec. 12, 2012).

b. Enforcement of the Brazilian Reorganization Plan in the United States

61. To the extent not otherwise stayed under sections 1520 and 362 of the Bankruptcy Code, the Petitioner requests that the Court, in its discretion under section 1521 of the Bankruptcy Code, enter a permanent injunction against any parties that may attempt to commence prepetition or postpetition actions and/or claims in the United States against the Debtors or their property. Such an injunction will help ensure the fair and efficient administration of the Brazilian Bankruptcy Proceedings, which aim to protect all parties in interest and to require that all of the Debtors' creditors be bound by the terms of the Brazilian Reorganization Plan, as approved by the Brazilian Confirmation Order.

62. The Court of Appeals for the Second Circuit has recognized the need for such an injunction under similar circumstances. Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B., 825 F.2d 709, 713-714 (2d Cir. 1987) ("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."). See also Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB, 773 F.2d 452, 458 (2d Cir. 1985) ("The granting of comity to a foreign bankruptcy proceeding enables the assets of a debtor to be dispersed in an equitable, orderly and systematic manner, rather than in a haphazard, erratic or piecemeal fashion.").

63. Similarly, the Supreme Court of the United States has long recognized the

necessity of giving effect to foreign reorganization plans in order to further these goals, reasoning that

> [u]nless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail. All home creditors can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized in other countries.

Canada S. Ry. Co. v. Gebhard, 109 U.S. 527, 539 (1883).

64. Here, the Petitioner fears that certain creditors may seek judgments in the United States against the Debtors or their property, seeking to obtain more than the pro rata treatment to which they are entitled under the Brazilian Reorganization Plan. If such creditors can effectively evade the terms of the Brazilian Reorganization Plan and the Brazilian Confirmation Order by commencing actions in the United States, the Debtors would be left to defend against these suits, regardless of their merit. This could deplete the resources of the Debtors' restructured business and prejudice its reorganized value. For these reasons, an injunction would support implementation of the Brazilian Confirmation Order and the Brazilian Reorganization Plan and would protect the interests of all of the Debtors' creditors in having claims against the Debtors and their estate valued and paid on a consistent, non-discriminatory basis as determined by the Brazilian Bankruptcy Court.

65. Pursuant to section 1521(e) of the Bankruptcy Code, the federal law standard for injunctive relief applies in chapter 15 cases. See 11 U.S.C. § 1521(e). Therefore, to obtain a permanent injunction, a movant must demonstrate (1) that an injunction is required to avoid irreparable harm and (2) that he will in fact win on the merits. See NextG Networks of New York, Inc. v. City of New York, No. 03 CIV 9672, 2006 WL 538189, at *8 (S.D.N.Y. Mar. 6, 2006).

66. Irreparable harm exists where the orderly determination of claims against a debtor and the fair distribution of a debtor's assets are disrupted. E.g., Salen Reefer Servs. AB, 773 F.2d at 458 ("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.") (citing Canada S. Ry. Co., 109 U.S. at 539); 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 Banco Nacional de Obras y Servicios Publicos, S.N.C., 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (same). See also In re Bird, 222 B.R. 229, 233 (Bankr. S.D.N.Y. 1998). Moreover, courts have held that "the premature piecing out of property involved in a foreign liquidation proceeding constitutes irreparable injury." In re Rubin, 160 B.R. 269, 283 (Bankr. S.D.N.Y. 1993) (quoting In re Lines, 81 B.R. 267, 270 (Bankr. S.D.N.Y. 1988)).

67. Here, the Petitioner has every reason to believe that he will be successful on the merits in his request for recognition of the Brazilian Bankruptcy Proceedings as foreign proceedings and, in any event, such recognition will occur simultaneously with or prior to the granting of any relief to the Petitioner pursuant to section 1521 of the Bankruptcy Code. Moreover, allowing creditors to litigate any claims based on the Notes or other unsecured claims against the Debtors in the United States would threaten the success of the Brazilian Bankruptcy Proceedings and Brazilian Reorganization Plan and may divert funds needed to maximize the value of the Debtors' estates, which would constitute irreparable harm. See MMG LLC, 256 B.R. at 555; In re Gercke, 122 B.R. 621, 626 (Bankr. D.D.C. 1991). Under similar circumstances, these same concerns led this Court in the chapter 15 case of Rede Energia to grant an injunction substantially similar to the injunction requested here. See Rede Energia S.A.,

515 B.R. at 94.

68. In addition, the injunctive relief sought herein would not cause undue hardship or prejudice to the rights of any U.S.-based creditors. In fact, the Brazilian Reorganization Plan and the voting procedures applied uniformly to all of the Debtors' creditors wherever they resided, including all of the holders of the Notes, who were provided with the opportunity to participate in the creditors' meeting and the voting process in accordance with Brazilian Bankruptcy Law. Petitioner Decl. ¶ 21. For example, members of the Ad Hoc Group based in the U.S. appeared at the creditors' meetings and participated fully and fairly in the approval and voting process, as contemplated by Brazilian Bankruptcy Law. Id. Moreover, the Indenture Trustee scrupulously disseminated notice to the beneficial holders of the Notes on numerous occasions regarding various developments in the Brazilian Bankruptcy Proceedings. In short, due process has been, and continues to be, preserved for all stakeholders in connection with the Brazilian Bankruptcy Proceedings, and the injunctive relief sought herein does nothing more than give effect to the Brazilian Confirmation Order and the Brazilian Reorganization Plan in the territorial limits of the United States.

**2. The Relief Requested Herein is Consistent with the Goals of Chapter 15**

69. 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 Bankruptcy Proceedings and the Brazilian Reorganization Plan.

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

70. 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 U.N. Comm'n on Int'l Trade Law, Cross-Border Insolvency: Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/CN.9/442 (Dec. 19, 1997) (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).

71. 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) (citing SNP Boat Serv. S.A. v. Hotel Le St. James, 483 B.R. 776, 784 (S.D. Fla. 2012); 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)); Tri–Cont'l Exch., 349 B.R. at 637 n.14 ("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. See also In re Sivec SRL, 476 B.R. 310, 323 (Bankr. E.D. Okla. 2012) (citing the Model Law). Section 1522 "gives the bankruptcy court broad latitude to mold relief to meet specific circumstances." Int'l Banking Corp. B.S.C., 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) (internal quotations and citations omitted); In re Atlas Shipping A/S, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009).

72. Here, the Debtors' creditors are "sufficiently protected" by the treatment

afforded to them under the Brazilian Reorganization Plan and the process by which the Brazilian Reorganization Plan was approved. The U.S. claimants, for example, are not being subjected to undue inconvenience or prejudice. Rather, the Brazilian Reorganization Plan is treating all similarly situated creditors equally and is distributing consideration under the Brazilian Reorganization Plan in a manner substantially similar to what might occur under U.S. law. See Atlas Shipping, 404 B.R. at 739. 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." Atlas Shipping, 404 B.R. at 742.

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

73. The Court may deny a request for any relief 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, at 109 (2005). Importantly, it is unnecessary that the result achieved in a foreign proceeding be identical to what could be obtained 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 Alt. Invs., 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010). As such, 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 Rede Energia S.A., 515 B.R. at 104 (refusing to deny comity on the basis that the Brazilian

Bankruptcy Law is not identical to U.S. law); In re Condor Ins. Ltd., 601 F.3d 319, 327 (5th Cir. 2010).

74. Furthermore, chapter 15 was drafted to incorporate the Model Law. Section 1501(a) of the Bankruptcy Code provides, in pertinent part, that:

> The purpose of this chapter is to incorporate the [Model Law] so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -
>
> (1) cooperation between -
>
> (A) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
>
> * * *
>
> (2) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor; [and]
>
> (3) protection and maximization of the value of the debtor's assets.

11 U.S.C. § 1501.

75. Here, the Brazilian Bankruptcy Proceedings and Brazilian Reorganization Plan are consistent with the public policy of the United States. Indeed, the relief obtained by the Aralco Group under the Brazilian Bankruptcy Law and now requested in the chapter 15 is nearly identical 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 discharged under a plan of reorganization. Moreover, U.S. courts regularly direct parties to take necessary actions to carry out transactions contemplated by the plan on behalf of the estate.[14] Thus, the requested relief that the Indenture Trustee and DTC be

[14] Section 1142(b) of the Bankruptcy Code, for example, states that

> court[s] may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property

authorized and directed to take any actions necessary for the consummation of the Brazilian Reorganization Plan, including the cancellation of the Notes and issuance of the new notes and warrants, would be available in chapter 11 cases and, therefore, should be granted here. See 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, thus, available to foreign representatives in chapter 15 under section 1521).

76. In addition, like proceedings under chapter 11, the Brazilian Bankruptcy Proceedings provide for a centralized process to assert and resolve claims against the estate in one tribunal, the Brazilian Bankruptcy Court, and to provide distributions to creditors in order of priority. See Brazilian Counsel Decl. at ¶¶ 32-33. 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, this Court would be assisting the Brazilian Bankruptcy Court in the orderly administration of the Debtors' assets by enjoining creditors from commencing or continuing actions against the Debtors or their assets in the United States and by giving the Indenture Trustee and the DTC the power that they believe they need to carry out their duties.

77. For these reasons, the Brazilian Bankruptcy Proceedings are patently fair and comport with the United States' standards of fundamental fairness and with United States public policy. Accordingly, the relief requested here should be granted.

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> dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b).

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

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

79. 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., Bank of New York v. Treco (In re Treco), 240 F.3d 148, 158 (2d Cir. 2001); In re Culmer, 25 B.R. 625, 628 (Bankr. S.D.N.Y. 1992).

80. As described in greater detail in the Brazilian Counsel 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 in a single proceeding. Brazilian Counsel Decl. at ¶ 24. Upon an objection from any creditor, the judge must convene a general meeting of the creditors, at which four classes of creditors are formed: labor, small businesses company creditors, secured creditors and unsecured creditors. Id. at ¶¶ 16-17. The plan must be accepted by simple majority of the class of creditors made up of labor-related claims. Id. at ¶ 21. For non-labor-related claims, the plan must not only be approved by a simple majority of creditors present at the creditors' meeting, in number, in each respective class, but must also be approved by creditors holding more than 50% of the amount of the allowed claims present at the creditors' meeting, in each respective class. Id. If one class dissents, the plan may be crammed down on the other two classes if certain requirements are

satisfied, including that more than one third (1/3) in number of the creditors in the dissenting class present at the creditors' meeting have voted in favor of the plan and, cumulatively, creditors present at the creditors' meeting that hold more than one third (1/3) in amount of the allowed claims in the dissenting class have voted in favor of the plan. Id. If the required majorities are not met in either or both of the labor or small businesses company creditor classes, more than one third (1/3) in number of creditors present at the meeting, regardless of the value of the claims held, must have voted in favor of the plan. Id. In the event that there are up to two dissenting classes, the plan may be crammed down on such classes only so long as the other two classes accept the plan, at least one third (1/3) of the members of the dissenting classes (pursuant to the quorum requirements outlined above) accept the plan, and the plan does not treat differently the members within a dissenting class. Id. at ¶ 24. Creditors have the right to object to a proposed plan within 30 days after the debtor has proposed it. Id. at ¶ 25. Moreover, the creditors may oppose the plan, and propose amendments to it, during the creditors' meeting until there is a final approval by the creditors. Id. Creditors may also seek reconsideration of a plan. Id. Within the five days after the court confirms a plan, creditors may present to the court a motion for clarification and, within ten days of confirmation, the creditors may file an interlocutory appeal to the appellate court. Id. Creditors are given proper notice of every court decision, and the deadlines for filing appeals count from the date on which creditors are notified, by means of a publication in the Official Gazette. Id. Further, the judicially appointed administrator provides additional oversight, ensuring accurate information is disseminated to the creditors and that an action to declare the debtor bankrupt is taken if the debtor defaults on its obligations under the plan of reorganization. Id. at ¶ 14. Thus, the Brazilian Bankruptcy Law provides a comprehensive procedure for the orderly resolution of claims and the equitable

distribution of the Debtors' property among their creditors. See Rede Energia S.A., 515 B.R. at 95 (finding that the Brazilian Bankruptcy Law "provides for a 'comprehensive procedure' for the orderly and equitable distribution of the . . . Debtors' assets to creditors"). As such, the first factor of section 1507(b) is satisfied.

81. 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 procedure does not create any additional burdens for a foreign creditor to file a claim. See, e.g., Treco, 240 F.3d at 158; In re Petition of Hourani, 180 B.R. 58, 68 (Bankr. S.D.N.Y. 1995).

82. Upon issuing the decision to accept a debtor's petition for judicial reorganization under the Brazilian Bankruptcy Law, the Brazilian judge orders the publication of the decision along with a list of creditors presented by the debtor in the Official Gazette. Brazilian Counsel Decl. at ¶ 26. Creditors then have 15 days to submit proofs of their claims to the judicial administrator without penalty. Id. Claims submitted after the 15-day period may be accepted as late claims, but in such a case, the creditors will have no voting rights in the general meeting of creditors, may be subject to fees, and will not be able to receive any dividends occurring before the filing of the late claims as will similarly situated creditors who filed timely claims. Id. The judicial administrator prepares and publishes a second list of creditors, based on the information provided by the debtor and contained in the proofs of claims. Id. Within ten days from the publication of such list, the debtor, the creditors and other stakeholders may present their objections to such list. Id. The court then rules on the objections and approves a final list of creditors and claims. Id. Foreign creditors have the same status as local creditors in

the proceedings and enjoy the same rights and protections under the Brazilian Bankruptcy Law and are also subject to the same timing rules and procedures for filing their claims. Id. at ¶ 27. In addition, the plan of reorganization may not convert claims in a foreign currency to Brazilian reais without the specific consent of each affected creditor. Id. Therefore, the Brazilian Bankruptcy Law provides adequate notice of the timing and procedures for filing of claims, and such procedure does not additionally burden foreign creditors. See Rede Energia S.A., 515 B.R. at 95-96 (finding that a proceeding under the Brazilian Bankruptcy Law satisfied the second factor of section 1507(b)). Accordingly, the second factor of section 1507(b) is satisfied.

83. The third factor enumerated in section 1507(b) of the Bankruptcy Code requires that the "additional assistance" being considered will reasonably assure prevention of preferential or fraudulent dispositions of property of the Debtor. See 11 U.S.C. § 1507(b)(3). Under the Brazilian Bankruptcy Law, if such debtor is declared bankrupt, then any creditor, the Brazilian public attorney's office or the judicial administrator appointed by the court may bring actions to avoid transfers made to third parties with the intention to harm creditors or damage the debtor's estate. Id. at ¶ 29. The court may also declare such transfers void sua sponte unless the intent to defraud is a disputed question of fact, in which case an action must be commenced by one of the parties listed above. Id. Some transfers are subject to avoidance, within a bankruptcy liquidation proceeding, as a matter of law if they were made during the legal term, which is a period set by the Brazilian judge and beginning not more than 90 days before the petition or the date of the first protest by a creditor on account of the debtor's default and ending on the petition date. Such transfers include payments of debts not yet due, payments of debts that were due but were enforceable in any way not provided for in the agreement memorializing the debt, and the creation of liens or any other in rem property interest in connection with a previously incurred

debt. Id. at ¶ 30. As such, the Brazilian Bankruptcy Law reasonably assures the prevention of preferential and fraudulent dispositions of the Debtors' property. Rede Energia S.A., 515 B.R. at 96-97 (finding that the protections afforded under the Brazilian Bankruptcy Law satisfied the third factor of section 1507(b)). Thus, the third factor of section 1507(b) is satisfied.

84. 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 11 U.S.C. § 1507(b)(4). See, e.g., In re Gee, 53 B.R. 891, 904 (Bankr. S.D.N.Y. 1985). See also Haarhuis v. Kunnan Enters., Ltd., 177 F.3d 1007 (D.C. Cir. 1999) (Taiwanese distribution system was substantially in accordance with U.S. law because priority 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, 241 B.R. 829, 836 (Bankr. S.D.N.Y. 1999) (citations omitted).

85. The distribution scheme under the Brazilian Bankruptcy Law substantially accords with the scheme under the Bankruptcy Code, including, most importantly, the priority for secured claims over unsecured claims. Brazilian Counsel Decl. at ¶ 32. In a liquidation proceeding, various administrative claims are paid, see id., followed by labor-related claims and then secured claims up to the value of the collateral securing the claims. Id. After secured claims are paid, then tax claims exclusive of fines receive payment, followed by other claims privileged under non-bankruptcy law. Id. Then, unsecured claims receive payment and, finally, claims subordinated by contract or law. Id. Claims by directors and shareholders not currently employed by the debtor receive lowest priority. Id. In a judicial reorganization, the claims of affected creditors are paid according to the provisions of the plan of reorganization. Id. at ¶ 33.

The plan of reorganization (i) may not provide a period longer than one year for the payment of labor-related claims (the payment of labor-related claims of a strictly salary nature, up to the limit of five minimum wages per worker, must be paid within 30 days); and (ii) may not provide for the suppression or the replacement of any security interest, when the asset covered by such security interest is disposed of, without the express approval of the relevant secured creditor. Id. Accordingly, the Brazilian Bankruptcy Law's distribution scheme substantially accords with the distribution scheme under the Bankruptcy Code. Rede Energia S.A., 515 B.R. at 95-96 (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.

86. 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."); Altas Shipping, 404 B.R. at 742 (granting comity to orders in Danish proceeding).

87. Principles of comity support the grant of the relief requested herein. 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 at 713 (citing Hilton v. Guyot, 159 U.S. 113, 164 (1895)). See also Salen Reefer Servs. AB, 773 F.2d at 456-57; Atlas Shipping, 404 B.R. at 733.

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); Gitlin v. Societe Generale (In re Maxwell Commc'ns Corp., 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 Oct. 9, 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).

88. 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 Somportex, Ltd. v. Phila. Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971); Salen Reefer Servs. AB, 773 F.2d at 457 (citing Somportex, 453 F.2d at 440). 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, in this case, because the Brazilian Bankruptcy Proceedings 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 Brazilian Bankruptcy Proceedings and the Brazilian Confirmation Order under sections 105(a), 1507 and 1521 of the Bankruptcy Code. See 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).

**Notice**

89. Notice of this Motion has been provided to: (a) all persons or bodies authorized to administer foreign proceedings of the Debtors; (b) Pillsbury Winthrop Shaw Pittman LLP, on behalf of the Indenture Trustee, 1540 Broadway, New York, New York 10036-4039, attn: Richard L. Epling, Esq. and Leo T. Crowley, Esq.; (c) the DTC, 55 Water Street - 1SL New York , New York, 10041; (d) Thomas Benes Felsberg, Felsberg, Felsberg & Associates, on behalf of the Ad Hoc Group, Avenida Cidade Jardim, 803 - Jardim Paulistano, São Paulo - SP, 01453-001, Brazil; (e) the Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006 New York, New York 10014; and (f) the Indenture Trustee (with instructions to forward such notice on behalf of the Petitioner to the DTC and to instruct the DTC to disseminate the same according to the DTC's customary practices). In accordance with the form and manner set forth in the *Application Pursuant to Federal Rules of Bankruptcy Procedure 2002(m) and (q) and 9007 for Order Scheduling Hearing and Specifying Form and Manner of Service of Notice* (the "Application"), which was filed substantially concurrently herewith, the Petitioner proposes to further notify creditors and parties in interest of the filing of the chapter 15 petition and his request for entry of the Proposed Order. In light of the relief requested herein, the Petitioner respectfully submits that no further notice of this Motion is necessary under the circumstances.

**No Prior Request**

90. No previous request for the relief requested herein has been made to this

or any other court.

**Conclusion**

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

Dated: New York, New York
February 25, 2014

Respectfully submitted,

WHITE & CASE LLP

By: /s/ John K. Cunningham
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## VERIFICATION OF CHAPTER 15 PETITION

Pursuant to 28 U.S.C. § 1746, I, Ricardo Costa Villela, declare as follows:

I am the authorized foreign representative of the Debtors. I have full authority to verify the foregoing chapter 15 petitions for recognition of a foreign main proceeding, including each of the attachments and appendices thereto, and I am informed and believe that the allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: São Paulo, Brazil
February 25, 2015

By: Ricardo Costa Villela
Title: Foreign Representative of the Debtors