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their capacity as the Joint Official Liquidators  
and Foreign Representatives of the AwalCo Entities*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In re:** : **Chapter 15**  
:  
**Awal Finance Company (No. 5) Limited,** : **Case No. 15-**  
:  
**Debtor in a Foreign Proceeding.** :

**In re:** : **Chapter 15**  
:  
**Awal Master Fund,** : **Case No. 15-**  
:  
**Debtor in a Foreign Proceeding.** :

**In re:** : **Chapter 15**  
:  
**Awal Feeder 1 Fund Limited,** : **Case No. 15-**  
:  
**Debtor in a Foreign Proceeding.** :

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<b>In re:</b>	:	<b>Chapter 15</b>
	:	
<b>Awal Finance Company Limited,</b>	:	<b>Case No. 15-</b>
	:	
<b>Debtor in a Foreign Proceeding.</b>	:	
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<b>In re:</b>	:	<b>Chapter 15</b>
	:	
<b>Awal Finance Company (No. 2) Limited,</b>	:	<b>Case No. 15-</b>
	:	
<b>Debtor in a Foreign Proceeding.</b>	:	
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<b>In re:</b>	:	<b>Chapter 15</b>
	:	
<b>Awal Finance Company (No. 3) Limited,</b>	:	<b>Case No. 15-</b>
	:	
<b>Debtor in a Foreign Proceeding.</b>	:	
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<b>In re:</b>	:	<b>Chapter 15</b>
	:	
<b>Awal Finance Company (No. 4) Limited,</b>	:	<b>Case No. 15-</b>
	:	
<b>Debtor in a Foreign Proceeding.</b>	:	
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**MEMORANDUM OF LAW IN SUPPORT OF JOINT VERIFIED  
PETITION FOR RECOGNITION AND CHAPTER 15 RELIEF**

## TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT .....	1
BACKGROUND .....	2
A.    Corporate Structure.....	2
B.    The Awal Bank Administration Proceedings. ....	5
C.    The Cayman Islands Proceedings. ....	7
JURISDICTION AND VENUE .....	8
ARGUMENT .....	9
I.    THE CAYMAN ISLANDS PROCEEDINGS MEET THE REQUIREMENTS FOR RECOGNITION .....	9
A.    The Debtors Satisfy Bankruptcy Code Section 109(a). ....	10
B.    The Petitioners Qualify as the Debtors’ Foreign Representatives. ....	10
C.    The Cayman Islands Proceedings are Foreign Proceedings. ....	11
D.    The Cayman Islands Proceedings are Foreign Main Proceedings. ....	15
E.    In the Event the Cayman Islands Proceedings are Not Recognized as Foreign Main Proceedings, They Should be Recognized as Foreign Nonmain Proceedings. ....	25
F.    The Requirements of Section 1515 Have Been Satisfied. ....	26
G.    Recognition of the Cayman Islands Proceedings Would Not Be Manifestly Contrary to U.S. Public Policy. ....	27
II.   THE PETITIONERS REQUEST ADDITIONAL NECESSARY AND APPROPRIATE RELIEF PURSUANT TO BANKRUPTCY CODE SECTION 1521(a) .....	29
CONCLUSION.....	31

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<u>Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet),</u> 737 F.3d 238 (2d Cir. 2013).....	10
<u>Hertz Corp. v. Friend,</u> 559 U.S. 77 (2010).....	17
<u>In re ABC Learning Centres Ltd.,</u> 445 B.R. 318 (Bankr. D. Del. 2010) .....	13
<u>In re AJW Offshore, Ltd.,</u> Case No. 13-70078 (Bankr. S.D.N.Y. Feb. 4, 2013) .....	14
<u>In re American Pegasus SPC,</u> Case No. 11-34429 (Bankr. Del. Dec. 23, 2011) .....	14
<u>In re Amerindo Internet Growth Fund Limited,</u> Case No. 07-10327 (Bankr. S.D.N.Y. Mar. 7, 2007).....	14
<u>In re Awal Bank, BSC,</u> Case No. 09-15923 (Bankr. S.D.N.Y. Oct. 28, 2009) .....	6
<u>In re Bancredit Cayman Ltd. (In Liquidation),</u> Case No. 06-11026, Docket No. 13 (Bankr. S.D.N.Y. June 16, 2006) .....	14
<u>In re Bear Stearns High-Grade Structured Credit Strategies Master Fund,</u> 374 B.R. 122 (Bankr. S.D.N.Y. 2007), <u>aff'd</u> 389 B.R. 325 (S.D.N.Y. 2008) .....	16, 17, 25
<u>In re Betcorp Ltd.,</u> 400 B.R. 266 (Bankr. D. Nev. 2009) .....	passim
<u>In re British Am. Ins. Co. Ltd.,</u> 425 B.R. 884 (Bankr. S.D. Fla. 2010).....	20
<u>In re Chiang,</u> 437 B.R. 397 (Bankr. C.D. Cal. 2010).....	16
<u>In re China Medical Techs., Inc.,</u> Case No. 12-13736 (Bankr. S.D.N.Y. Oct. 11, 2012) .....	14
<u>In re Ephedra Prods. Liab. Litig.,</u> 349 B.R. 333 (Bankr. S.D.N.Y. 2006).....	28

<u>In re Fairfield Sentry Ltd.,</u> 440 B.R. 60 (Bankr. S.D.N.Y. 2010), <u>aff'd</u> , 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011), <u>aff'd</u> , 714 F.3d 127 (2d Cir. 2013) .....	17
<u>In re Gerova Fin. Grp., Ltd.,</u> 482 B.R. 86 (Bankr. S.D.N.Y. 2012) .....	17
<u>In re Millard,</u> 501 B.R. 644 (Bankr. S.D.N.Y. 2013) .....	14
<u>In re Millennium Global Emerging Credit Master Fund Ltd.,</u> 458 B.R. 63 (Bankr. S.D.N.Y. 2011), <u>aff'd</u> , 474 B.R. 88 (S.D.N.Y. 2012) .....	26
<u>In re Octaviar Admin. Pty Ltd.,</u> 511 B.R. 361 (Bankr. S.D.N.Y. 2014) .....	10
<u>In re Saad Investments Finance Company (No.5) Limited,</u> Case No. 09-13985 (Bankr. Del. Dec. 4, 2009) .....	14
<u>In re Sextant Strategic Hybrid2Hedge Resources Fund Offshore Ltd.,</u> Case No. 10-44712 (S.D. Fl. Jan. 13, 2011) .....	14
<u>In re SPhinX,</u> 351 B.R. 103 (Bankr. S.D.N.Y. 2006), <u>aff'd</u> , 371 B.R. 10 (S.D.N.Y. 2007) .....	15
<u>In re Suntech Power Holdings Co., Ltd.,</u> 520 B.R. 399 (Bankr. S.D.N.Y. 2014) .....	18
<u>In re Trade &amp; Commerce Bank (In Liquidation),</u> Case No. 05-60279 (Bankr. S.D.N.Y. Feb. 8, 2006) .....	15
<u>In re Tradex Swiss AG,</u> 384 B.R. 34 (Bankr. D. Mass. 2008) .....	16
<u>In re Tri-Cont'l Exch. Ltd.,</u> 349 B.R. 627 (Bankr. E.D. Cal. 2006) .....	15, 28
<u>Lavie v. Ran (In re Ran),</u> 607 F.3d 1017 (5th Cir. 2010) .....	passim
<u>Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.),</u> 714 F.3d 127 (2d Cir. 2013) .....	passim

#### STATUTES

11 U.S.C. § 101 .....	10, 11
11 U.S.C. § 109(a) .....	10

11 U.S.C. § 1501(a)(3).....	28
11 U.S.C. § 1501(a)(4).....	28
11 U.S.C. § 1502.....	25
11 U.S.C. § 1506.....	27
11 U.S.C. § 1508.....	12
11 U.S.C. § 1509(b) .....	28
11 U.S.C § 1515.....	27
11 U.S.C. § 1516(c) .....	15
11 U.S.C. § 1517(a) .....	9, 25
11 U.S.C. § 1517(b)(1) .....	15
11 U.S.C. § 1520(a)(1).....	28, 29
11 U.S.C. § 1521(a) .....	29
11 U.S.C. § 1522(a) .....	29
 <b>OTHER AUTHORITIES</b>	
Cayman Companies Law .....	passim
Decree Law No. 64 of 2006, the Central Bank of Bahrain and Financial Institutions Law, Art. 4(4).....	6
UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment.....	12, 21, 22
H.R. Rep. No. 109-31(I), (2005), <i>reprinted in</i> 2005 U.S.C.C.A.N. 88 .....	12

Christopher Dorrien Johnson, Russell Homer, Bruce Alexander Mackay, and Geoffrey Lambert Carton-Kelly, in their capacity as the Joint Official Liquidators (“JOLs”) and duly appointed foreign representatives (the “Petitioners”) of the AwalCo Entities,<sup>1</sup> debtors in insolvency proceedings under Cayman Islands law (the “Cayman Islands Proceedings”), currently pending before the Grand Court of the Cayman Islands, Financial Services Division (the “Cayman Islands Court”), by their undersigned counsel, respectfully submit this joint memorandum of law in support of their *Joint Verified Petition for Recognition under Chapter 15 and Relief under 11 U.S.C. § 1521* (the “Recognition Petition”) seeking the entry of a proposed order attached as Exhibit A thereto (the “Order”), (i) recognizing the Cayman Islands Proceedings as foreign main proceedings or, in the alternative, as foreign nonmain proceedings, and (ii) granting related relief under section 1521 of Chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”) as set forth therein and herein.

### **PRELIMINARY STATEMENT**

1. The Petitioners are the duly authorized foreign representatives of the Debtors in connection with the Cayman Islands Proceedings pending before the Cayman Islands Court. Pursuant to the Supervision Orders (defined below) of the Cayman Islands Court appointing them as JOLs of the Debtors, the Petitioners are charged with administering and realizing upon the assets of the Debtors and distributing those assets in accordance with the insolvency laws of the Cayman Islands and under the supervision of the Cayman Islands Court. In furtherance of these duties, the Petitioners, in their capacities as the JOLs and foreign representatives of the

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<sup>1</sup> The seven “AwalCo Entities” or the “Debtors,” along with the last four digits of each Debtor’s registration number, are: Awal Master Fund (8344); Awal Feeder 1 Fund Limited (8345); Awal Finance Company Limited (2434); Awal Finance Company (No. 2) Limited (6834); Awal Finance Company (No. 3) Limited (6837); Awal Finance Company (No. 4) Limited (4954); and Awal Finance Company (No. 5) Limited (6754). The mailing address of the Debtors’ Registered Office is c/o Chris Johnson Associates, P.O. Box 2499, Elizabethan Square, 80 Shedden Road, George Town Grand Cayman KY1-1104, Cayman Islands.

Debtors, seek foreign main recognition or, in the alternative, foreign nonmain recognition, of the Cayman Islands Proceedings in aid of their efforts to maximize recoveries to, and provide for an equitable distribution of value among, all creditors.

2. As set forth in detail herein, all of the requirements for Chapter 15 recognition of the Cayman Islands Proceedings as “foreign proceedings” have been satisfied: (i) the Cayman Islands Proceedings are “foreign proceedings” within the meaning of section 101(23) of the Bankruptcy Code; (ii) the Petitioners are “foreign representatives” and “persons” within the meaning of sections 101(24) and (41) of the Bankruptcy Code; (iii) the Recognition Petition meets the filing requirements of section 1515 of the Bankruptcy Code; and (iv) recognition of the Cayman Islands Proceedings would not be manifestly contrary to U.S. public policy. Furthermore, as explained below, the Cayman Islands Proceedings should be accorded recognition as “foreign main proceedings” under section 1517 of the Bankruptcy Code because the “center of main interests” (“COMI”) of the Debtors is in the Cayman Islands, the jurisdiction where, *inter alia*, the Debtors’ registered office is and has always been located and where the activities and administrative functions of and pertaining to the Debtors has been indisputably centered, with the knowledge and understanding of their creditors, since 2009.

3. In addition, the Petitioners seek relief under section 1521 of the Bankruptcy Code, entrusting them with administration of the Debtors’ assets within the territorial jurisdiction of the United States and enabling them to take discovery and obtain information in connection with the Debtors’ assets, liabilities, and affairs.

## **BACKGROUND**

### **A. Corporate Structure.**

4. The Debtors are subsidiaries of, and are 100% owned by, Awal Bank, BSC (“Awal Bank”), a foreign banking corporation in administration (as described below) in the



Kingdom of Bahrain. Prior to the commencement of the administration proceedings, Awal Bank's principal business involved the investment of assets held in Bahrain and throughout the world. Its counterparties and customers are primarily other banks located mainly in the Middle East and Europe.

5. On December 1, 2006, Awal Bank organized Debtor Awal Master Fund ("AMF") as an unrestricted company under the laws of the Cayman Islands. See AMF Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit A. AMF is a special purpose investment vehicle established to hold specific investment securities. As of February 15, 2015, AMF held approximately \$79 million of liquidated assets, under the control and custody of the JOLs, in major financial institutions in the Cayman Islands. AMF holds only one unliquidated asset in the form its interest in the Touradji Private Equity Offshore Fund Ltd hedge fund, which is located at 101 Park Avenue, 48th Floor, New York, NY 10178, and associated distributions. These interests are 100% owned by AMF, and have an approximate reported net asset value of \$986,000. See Mackay Decl. ¶ 8.

6. Also on December 1, 2006, Awal Bank organized Debtor AWAL Feeder 1 Fund Limited ("AF1F") as an unrestricted company under the laws of the Cayman Islands. See AF1F Amended Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit B. AF1F is as a special purpose vehicle established to hold a 100% equity interest in AMF. As of the filing of the Recognition Petition, AF1F has no holdings other than its equity interest in AMF. See Mackay Decl. ¶ 9.

7. On August 14, 2006, Awal Bank organized Debtor Awal Finance Company Limited ("AFCL") as an unrestricted company under the laws of the Cayman Islands. See AFCL Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit C. AFCL is

a special purpose investment vehicle established to hold specific investment securities. On August 29, 2008, AFCL sold its entire investment portfolio to JP Morgan Securities Ltd. for \$545 million. As of the filing of the Recognition Petition, the only material asset held by AFCL is a \$24.3 million loan owed by Awal Bank. See Mackay Decl. ¶ 10.

8. On November 6, 2006, Awal Bank organized Debtor Awal Finance Company (No. 2) Limited (“AFCL2”) as an unrestricted company under the laws of the Cayman Islands. See AFCL2 Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit D. AFCL2 is a special purpose investment vehicle established to hold specific investment securities. As of February 15, 2015, AFCL2 held approximately \$59 million of liquidated assets, under the control and custody of the JOLs, in major financial institutions in the Cayman Islands. See Mackay Decl. ¶ 11.

9. Also on November 6, 2006, Awal Bank organized Debtor Awal Finance Company (No. 3) Limited (“AFCL3”) as an unrestricted company under the laws of the Cayman Islands. See AFCL3 Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit E. AFCL3 is a special purpose investment vehicle established to hold specific investment securities. During the two months following its organization AFCL3 purchased investment securities in the amount of \$73.7 million. Through December 31, 2008, AFCL3 reported investment losses of approximately \$52 million. The JOLs are in the process of investigating these losses. As of February 15, 2015, AFCL3 held no unliquidated assets and *de minimus* liquidated assets. See Mackay Decl. ¶ 12.

10. On April 20, 2004, Saad Investments Company Limited (“SICL”) established Saad Investments Finance Company (No. 4) Limited as an unrestricted company under the laws of the Cayman Islands. See AFCL4 Memorandum and Articles of Association, attached to the

Mackay Decl. as Exhibit F. On November 10, 2007, SICL transferred ownership of the entity to Awal Bank, and changed the name of the entity to Awal Finance Company (No. 4) Limited (“AFCL4”). See AFCL4 Certificate of Incorporation of Change of Name, attached to the Mackay Decl. as Exhibit G. AFCL4 is a special purpose investment vehicle established to hold specific investment securities. On August 29, 2008, AFCL4 sold all of its investment securities to JP Morgan Bank and JP Morgan Securities Ltd. for \$384 Million. As of the filing of the Recognition Petition, the only material asset retained by AFCL4 is a \$19 million loan owed by SICL. See Mackay Decl. ¶ 13.

11. On November 3, 2006, SICL established Saad Investments Finance Company (No. 5) Limited as an unrestricted company under the laws of the Cayman Islands. See AFCL5 Memorandum and Articles of Association, attached to the Mackay Decl. as Exhibit H. On November 10, 2007, SICL transferred ownership of the entity to Awal Bank, and changed the name of the entity to Awal Finance Company (No. 5) Limited (“AFCL5”). See AFCL5 Certificate of Incorporation of Change of Name, attached to the Mackay Decl. as Exhibit I. AFCL5 is a special purpose investment vehicle established to invest in hedge funds. As of February 15, 2015, AFCL5 held approximately \$75 million in liquidated assets, under the control and custody of the JOLs, in major financial institutions in the Cayman Islands. See Mackay Decl. ¶ 14.

12. In addition to the liquidated assets held in the Cayman Islands (described above) each Debtor has provided a \$10,000 retainer to Brown Rudnick LLP, which is held in Citibank N.A., located in the State of New York. See Mackay Decl. ¶ 32.

**B. The Awal Bank Administration Proceedings.**

13. Awal Bank is owned jointly by the Saad Group, a group of companies in the Persian Gulf Region, and Maan al-Sanea, the head of the Saad Group. In early June of 2009,

Awal Bank's financial troubles became part of widely-reported news stories in the Persian Gulf Region and worldwide in the international business community. The Saad Group then defaulted on a \$2.75 billion facility and announced its intention to restructure its debt -- shortly thereafter, ratings agencies downgraded the Saad Group to default status.

14. The Central Bank of Bahrain ("CBB") is the government entity responsible for regulating the financial services industry in Bahrain. See Decree Law No. 64 of 2006, the Central Bank of Bahrain and Financial Institutions Law ("CBBFIL"), Art. 4(4). By Resolution No. 38 of 2009, dated July 30, 2009, the Governor of the CBB, acting under the authority of the CBBFIL, placed Awal Bank in administration, thereby commencing insolvency proceedings in Bahrain. The CBB stated that administration was necessary because: (a) Awal Bank had become insolvent; and (b) it would cause damage to the financial services industry in Bahrain if Awal Bank continued to provide regulated financial services.

15. By Resolution No. 44 of 2009, dated August 13, 2009, the Governor of the CBB appointed Charles Russell LLP (n/k/a Charles Russell Speechlys LLP) ("Charles Russell Speechlys"), a law firm located in the United Kingdom, to serve as the external administrator of Awal Bank (the "External Administrator"). See Mackay Decl. ¶ 21.

16. As part of the External Administrator's efforts to equitably administer Awal Bank's worldwide assets, on September 30, 2009, the External Administrator, as Foreign Representative, filed a Verified Petition For Recognition Of A Foreign Proceeding And Motion For Provisional Relief, thereby commencing a case under Chapter 15 of title 11 of the United States Code. See 11 U.S.C. §§ 1504 and 1515; *Verified Petition for Recognition of a Foreign Proceeding and Motion for Provisional Relief, In re Awal Bank, BSC*, Case No. 09-15923 (Bankr. S.D.N.Y. Oct. 28, 2009) [Dkt. No. 2]. Shortly thereafter, on October 27, 2009, this Court

signed an order recognizing Awal Bank's insolvency proceeding as a foreign main proceeding. See Order Granting Recognition of Foreign Main Proceeding and Relief in Aid Thereof, In re Awal Bank, BSC, Case No. 09-15923 (Bankr. S.D.N.Y. Oct. 28, 2009) [Dkt. No. 18].

**C. The Cayman Islands Proceedings.**

17. On September 28, 2009, Awal Bank, as the sole owner of the Debtors, held an extraordinary general meeting at the offices of Charles Russell Speechlys in Manama, Bahrain. At that meeting the External Administrator made a special resolution that the Debtors were to be voluntarily wound up, and that an application would be made to the Cayman Islands Court for supervision. See Written Special Resolutions, attached to the Mackay Decl. as Exhibit K.

18. On November 16, 2009, the Cayman Islands Court entered orders (the "Supervision Orders") commencing the Cayman Islands Proceedings and appointing each of the Petitioners as the Joint Official Liquidators of each AwalCo Entity under the insolvency provisions of the Companies Law of the Cayman Islands (2013 Revision) (entitled "Winding up of Companies and Associations") (the "Cayman Companies Law"). The Supervision Orders are attached to the Recognition Petition as Exhibit B.

19. The ultimate goal of the Cayman Islands Proceedings is to make equitable distribution to the Debtors' creditors. Accordingly, the Supervision Orders granted Petitioners the sanction of the Cayman Islands Court to take a myriad of actions with the ultimate goal of making equitable distribution to creditors, including authorizing the Petitioners to: (i) take possession of the property of the Debtors; (ii) do all acts and execute deeds, receipts and other documents on behalf of the Debtors; (iii) bring or defend legal proceedings on behalf of the Debtors; (iv) carry on the business of the Debtors; (v) dispose of any property of the Debtors; (vi) make compromises and arrangements with creditors; and (vii) raise and borrow money and grant securities over the property of the Debtors. See Supervision Orders ¶¶ 4(a), 5.

20. Following entry of the Supervision Orders, the Petitioners, under their authority as JOLs, engaged in a thorough investigation of each AwalCo Entity. Through this investigation Petitioners were able to identify and effect the liquidation of substantially all of the Debtors' assets, an aggregate amount of approximately \$230 million. On liquidation, the Debtors' assets were transferred to accounts in the names of the Debtors and under the control of the JOLs at three major financial institutions in the Cayman Islands. Under the authority of the Petitioners, approximately \$17 million of these funds have been expended in the liquidation, with approximately \$213 million remaining. Of that sum, approximately \$79 million is held by Debtor AMF, \$59 million is held by Debtor AFCL2, and \$75 million is held by Debtor AFCL5.

21. At this point in the liquidations, the final bar preventing the Petitioners from distributing the Debtors' remaining assets to their creditors is a disputed claim pending against the collective Debtors and others for \$9.2 billion, which is being vigorously defended, which claim is held by the Ahmad Hamad Algosabi and Brothers Company ("AHAB"). The Petitioners are engaged in litigation with AHAB over the amount of this claim in the Cayman Islands Grand Court. See Cayman Islands Grand Court, Cause No. FSD 54 of 2009. On June 17, 2011, the Petitioners admitted AHAB's proof of debt against the collective Debtors for the nominal sum of \$1.

### **JURISDICTION AND VENUE**

22. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

23. Venue is proper in this district pursuant to 28 U.S.C. § 1410 in that the Debtors' principal assets in the United States are located within this district as set forth below, making venue proper pursuant to 28 U.S.C. § 1410(1), and, alternatively, the Chapter 15 case of the

Debtors' parent company, Awal Bank, is currently pending in this district, making venue proper pursuant to 28 U.S.C. § 1410(3).

24. The statutory predicates for the relief requested herein are sections 1509, 1515, 1516, 1517, 1520, 1521 and 1522 of the Bankruptcy Code.

### **ARGUMENT**

#### **I. THE CAYMAN ISLANDS PROCEEDINGS MEET THE REQUIREMENTS FOR RECOGNITION**

25. Under section 1517(a) of the Bankruptcy Code, “an order recognizing a foreign proceeding shall be entered if – (1) such foreign proceeding . . . is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515.” 11 U.S.C. § 1517(a). The Cayman Islands Proceedings are entitled to recognition as “foreign main proceedings” under section 1517 of the Bankruptcy Code because:

- a. the Debtors maintain property within the territorial jurisdiction of the United States, and therefore satisfy the requirements of Bankruptcy Code Section 109(a);
- b. the Petitioners are “persons” within the meaning of section 101(41) of the Bankruptcy Code and “foreign representatives” within the meaning of section 101(24) of the Bankruptcy Code;
- c. the Cayman Islands Proceedings are “foreign proceedings” within the meaning of section 101(23) of the Bankruptcy Code;
- d. the Cayman Islands Proceedings are “foreign main proceedings” within the meaning of section 1502(4) of the Bankruptcy Code because the Cayman Islands Proceedings are pending in the jurisdiction where the Debtors' center of main interests are located;
- e. the Recognition Petition meets the procedural requirements of section 1515 of the Bankruptcy Code; and
- f. granting recognition of the Cayman Islands Proceedings as foreign main proceedings is not manifestly contrary to the public policy of the United

States, and is therefore required pursuant to section 1517 of the Bankruptcy Code.

**A. The Debtors Satisfy Bankruptcy Code Section 109(a).**

26. As a threshold matter, the Debtors each qualify as a “debtor” under the Bankruptcy Code. Section 109(a) of the Bankruptcy Code requires that a debtor have a residence, domicile, a place of business or property in the United States. See 11 U.S.C. § 109(a). The Second Circuit Court of Appeals has held that Section 109(a) applies to the debtor in a foreign main proceeding under Chapter 15. See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet), 737 F.3d 238 (2d Cir. 2013). On March 16, 2015, each Debtor deposited or caused to be deposited \$10,000 into their United States counsel’s client trust account -- as this Court has held, those retainers qualify as “property in the United States” within the meaning of section 109(a). See In re Octaviar Admin. Pty Ltd., 511 B.R. 361, 373-74 (Bankr. S.D.N.Y. 2014) (noting the “line of authority that supports the fact that prepetition deposits or retainers can supply ‘property’ sufficient to make a foreign debtor eligible to file in the United States” and holding that the prepetition deposit of \$10,000 into United States counsel’s client trust account was “sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code.”). The Debtors accordingly qualify as “debtors” entitled to relief under the Bankruptcy Code.

**B. The Petitioners Qualify as the Debtors’ Foreign Representatives.**

27. The Recognition Petition was filed by the Petitioners, who are the duly authorized, court-appointed “foreign representatives” of the AwalCo Entities within the meaning of section 101(24) of the Bankruptcy Code. The term “foreign representative” is defined in section 101(24) of the Bankruptcy Code as follows:

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). Additionally, section 101(41) of the Bankruptcy Code defines the term "person" as an "individual, partnership, and corporation, but does not include governmental unit." 11 U.S.C. § 101(41). There can be no dispute that the Petitioners, as individuals, are "persons."

28. By the Supervision Orders, the Cayman Islands Court appointed the Petitioners as the AwalCo Entities' JOLs under Part Five of the Cayman Companies Law. See Cayman Companies Law § 105(1). JOLs are officers of the Cayman Islands Court authorized to administer the reorganization or liquidation of a debtor's assets. See Cayman Companies Law §§ 110(1), 108(2).

29. As the only persons permitted to administer the AwalCo Entities' insolvency proceedings, the Petitioners, in their capacity as JOLs, thus qualify as "foreign representatives" under section 101(24) of the Bankruptcy Code. Specifically, they are "persons" – *i.e.*, individuals – that are "authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs." 11 U.S.C. § 101(24).

**C. The Cayman Islands Proceedings are Foreign Proceedings.**

30. The Cayman Islands Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code. Section 101(23) of the Bankruptcy Code provides that:

The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23).

31. In In re Betcorp Ltd., 400 B.R. 266 (Bankr. D. Nev. 2009), the Bankruptcy Court for the District of Nevada analyzed whether an Australian voluntary winding up proceeding could be recognized as a foreign proceeding under Chapter 15. That court noted that Chapter 15 “incorporate[s] the Model Law on Cross-Border Insolvency,” and to interpret the term “foreign proceeding,” “the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.” Id. at 275-76 (quoting 11 U.S.C. § 1508).

To fall within the scope of the Model Law, a foreign insolvency proceeding needs to possess certain attributes. These include the following: basis in insolvency-related law of the originating State; involvement of creditors collectively; control or supervision of the assets and affairs of the debtor by a court or another official body; and reorganization or liquidation of the debtor as the purpose of the proceeding.

Id. at 276 (quoting Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency, (the “Guide to Enactment”) ¶ 32).<sup>2</sup>

32. The court then conducted a lengthy examination of the Australian winding up to determine whether it met the requirements, namely whether it was: “(i) a proceeding; (ii) that is either judicial or administrative; (iii) that is collective in nature; (iv) that is in a foreign country; (v) that is authorized or conducted under a law related to insolvency or the adjustment of debts; (vi) in which the debtor’s assets and affairs are subject to the control or supervision of a foreign

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The Guide to Enactment is available at <http://www.uncitral.org/pdf/english/texts/insolven/1997-Model-Law-Insol-2013-Guide-Enactment-e.pdf>. Section 1508 of the Bankruptcy Code instructs courts, in interpreting Chapter 15, 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. Accordingly, the 2005 House Report accompanying the enactment of Chapter 15 states that the Guide to Enactment “should be consulted for guidance as to the meaning and purpose of [Chapter 15’s] provisions.” H.R. Rep. No. 109-31(I), at 106 n.101 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88; *see Morning Mist Holdings Ltd. v. Kryz (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 136 (2d Cir. 2013) (hereinafter “Morning Mist”) (“Legislative history points to the [Guide to Enactment] for guidance as to the meaning and purpose of [Chapter 15’s] provisions. Although the statutory text controls, first and ultimately, we consider international sources to the extent they help us carry out the congressional purpose of achieving international uniformity in cross-border insolvency proceedings.”) (citations omitted).

court; and (vii) which proceeding is for the purpose of reorganization or liquidation.” Id. at 277. That court concluded that all relevant criteria were met and recognized the Australian proceeding as a foreign proceeding.

33. Similarly, the Cayman Islands Proceedings meet all of the criteria set forth in section 101(23) of the Bankruptcy Code and related case law thereto, and are therefore entitled to recognition as “foreign proceedings” under Chapter 15.

34. First, the Cayman Islands Proceedings are “proceedings,” as they are liquidation procedures under the Cayman Companies Law that were initiated in the Cayman Islands Court.

35. Second, the Cayman Islands Proceedings are “judicial” because they are: (a) proceedings that were initiated in the Cayman Islands Court by entering the Supervision Orders; and (b) proceedings that the Cayman Islands Courts are required to oversee and supervise pursuant to the Cayman Companies Law. See Cayman Companies Law § 124; see also Mackay Decl. ¶¶ 24-25.

36. Third, the Cayman Islands Proceedings are “collective in nature” because the claims of all creditors will be addressed and resolved in a fair and neutral manner, without favoring any single creditor or group of creditors. The court in Betcorp found that a proceeding was collective where it “considers the rights and obligations of all creditors” in contrast to a “receivership remedy instigated at the request, and for the benefit, of a single secured creditor.” 400 B.R. at 281; see also In re ABC Learning Centres Ltd., 445 B.R. 318, 328 (Bankr. D. Del. 2010) (citing Betcorp regarding the meaning of “collective in nature”), aff’d, 728 F.3d 301 (3d Cir. 2013).

37. Here, the Cayman Islands Proceedings are bankruptcy proceedings under the Cayman Companies Law, which provides that a court must give regard to the wishes of creditors

for all matters related to the winding up of an insolvent company and that property of the company is to be applied in satisfaction of its liabilities according to each creditor's rights and interests. See, e.g., Cayman Companies Law §§ 105, 115, 139, 140. As such, the Cayman Islands Proceedings are collective in nature.

38. Fourth, the Cayman Islands Proceedings are pending in the Cayman Islands, a foreign country.

39. Fifth, the Cayman Islands Proceedings are “authorized or conducted under a law related to insolvency” because they are governed by the Cayman Companies Law, which specifies the proceedings for the liquidation of property held by debtors who are unable to pay their debts or are insolvent. See generally Cayman Companies Law Part V.

40. Sixth, the Cayman Islands Proceedings are “subject to the control or supervision of a foreign court” because the Cayman Islands Court is required to supervise the administration of the Debtors' insolvency proceedings. See Cayman Companies Law § 124.

41. Seventh, the objective of the Cayman Islands Proceedings, as described above, is the liquidation of the Debtors' assets.

42. Significantly, since the enactment of Chapter 15, U.S. courts have routinely recognized Cayman Islands insolvency proceedings under the Cayman Companies Law as foreign proceedings. See, e.g., In re Millard, 501 B.R. 644 (Bankr. S.D.N.Y. 2013); In re AJW Offshore, Ltd., Case No. 13-70078 (Bankr. S.D.N.Y. Feb. 4, 2013); In re China Medical Techs., Inc., Case No. 12-13736, Docket No. 16 (Bankr. S.D.N.Y. Oct. 11, 2012); In re American Pegasus SPC, Case No. 11-34429, Docket No. 20 (Bankr. Del. Dec. 23, 2011); In re Sextant Strategic Hybrid2Hedge Resources Fund Offshore Ltd., Case No. 10-44712, Docket No. 10 (S.D. Fl. Jan. 13, 2011); In re Saad Investments Finance Company (No.5) Limited, Case No. 09-

13985, Docket No. 39 (Bankr. Del. Dec. 4, 2009); In re Amerindo Internet Growth Fund Limited, Case No. 07-10327, Docket No. 7 (Bankr. S.D.N.Y. March 7, 2007); In re Bancredit Cayman Ltd. (In Liquidation), Case No. 06-11026, Docket No. 13 (Bankr. S.D.N.Y. June 16, 2006); In re SPhinX, 351 B.R. 103 (Bankr. S.D.N.Y. 2006), aff'd, 371 B.R. 10 (S.D.N.Y. 2007); In re Trade & Commerce Bank (In Liquidation), Case No. 05-60279, Docket No. 9 (Bankr. S.D.N.Y. Feb. 8, 2006).

43. As all of the criteria required by section 101(23) of the Bankruptcy Code are satisfied, this Court should recognize the Cayman Islands Proceedings as “foreign proceedings” as required by section 1517 of the Bankruptcy Code.

**D. The Cayman Islands Proceedings are Foreign Main Proceedings.**

44. A foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code may be recognized under section 1517 of the Bankruptcy Code as either (i) a “foreign main proceeding” or (ii) a “foreign nonmain proceeding,” within the meaning of section 1502 of the Bankruptcy Code. See 11 U.S.C. § 1517(a)(1).

45. Under the Bankruptcy Code a foreign proceeding “*shall* be recognized as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests.” 11 U.S.C. § 1517(b)(1) (emphasis added). Thus, where, as is the case here, a foreign proceeding is pending in the country in which the debtor has its COMI, such proceeding *must* be recognized as a foreign main proceeding.

**1. The Statutory Presumption of a Cayman Islands COMI Applies.**

46. The phrase “center of main interests” is a term of art that the Bankruptcy Code does not define explicitly. See In re Betcorp Ltd., 400 B.R. at 287 (“the term ‘center of main interests’ is not specifically defined, either in chapter 15 or the Model Law”). However, section 1516(c) of the Bankruptcy Code provides that, “in the absence of evidence to the contrary, the

debtor's registered office . . . is presumed to be the center of the debtor's main interests." 11 U.S.C. § 1516(c); see In re Tri-Cont'l Exch. Ltd., 349 B.R. 627, 635 (Bankr. E.D. Cal. 2006) ("In effect, the registered office (or place of incorporation) is evidence that is probative of, and that may in the absence of other evidence be accepted as a proxy for, 'center of main interests.'"); see also Lavie v. Ran (In re Ran), 607 F.3d 1017, 1022 (5th Cir. 2010); In re Betcorp, 400 B.R. 266, 291 (Bankr. D. Nev. 2009); In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007), aff'd 389 B.R. 325 (S.D.N.Y. 2008); In re Tradex Swiss AG, 384 B.R. 34, 43 (Bankr. D. Mass. 2008).

47. In this case, the Debtors are Cayman Islands corporations and their registered offices are, and have always been, located in the Cayman Islands. See Mackay Decl. ¶¶ 15-16, 44. Accordingly, there is a statutory presumption that the Debtors' COMI is in the Cayman Islands.

48. Although the statutory presumption may be rebutted by "evidence to the contrary," the relevant evidence overwhelmingly demonstrates that the Debtors' COMI is located in the Cayman Islands. Indeed, there is no plausible claim that the Debtors' COMI exists in any other jurisdiction. See In re Chiang, 437 B.R. 397, 403 (Bankr. C.D. Cal. 2010) ("a debtor must have a COMI and it must be in a specific country"). Therefore, the presumption of a Cayman Islands COMI cannot be rebutted and, even if the Court were to decide not to rely on the presumption, the evidence affirmatively and unequivocally establishes a Cayman Islands COMI.

**2. The Debtors' Central Place of Administration is Located in the Cayman Islands, a Fact that is Ascertainable by Third Parties.**

49. U.S. courts and other relevant authorities have instructed that, in determining a debtor's COMI, the principal factors are the location of the debtor's central place of administration and whether that place of administration is ascertainable by third parties. For

example, in Morning Mist, the Second Circuit, in the seminal case in the United States on corporate COMI, held that “[t]he relevant principle . . . is that the COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties.” See also In re Betcorp, 400 B.R. at 290 (the COMI determination “examines the debtor’s administration, management, and operations along with whether reasonable and ordinary third parties can discern or perceive where the debtor is conducting these various functions.”); In re Gerova Fin. Grp., Ltd., 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012) (whether COMI is “ascertainable by third parties” is “an important factor in the COMI determination”).

50. Similarly, U.S. courts have also equated the COMI concept with “principal place of business” under U.S. law. See In re Betcorp, 400 B.R. at 291–92 (“the phrase ‘center of main interests’ . . . could have been replaced by ‘principal place of business’ as a phrase more familiar to American judges and lawyers.”) (quoting Jay Lawrence Westbrook, Chapter 15 at Last, 79 AM. BANKR. L.J. 713, 719–20 (2005)); In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. at 129 (“[T]he COMI concept . . . generally equates with the concept of a ‘principal place of business’ in United States law.”) (citing In re Tri-Cont’l Exch. Ltd., 349 B.R. 627, 634 (Bankr. E.D. Cal. 2006)), aff’d, 389 B.R. 326 (S.D.N.Y. 2008); but see Morning Mist, 714 F.3d at 136 (differentiating between COMI and the principal place of business). The principal place of business is where “a corporation’s officers direct, control, and coordinate the corporation’s activities,” otherwise known as the corporation’s “nerve center.” Hertz Corp. v. Friend, 559 U.S. 77, 91-92 (2010); see also In re Fairfield Sentry Ltd., 440 B.R. 60, 64 (Bankr. S.D.N.Y. 2010) (finding that the debtors’ COMI was in the British Virgin Islands where “[a]lthough the Debtors’ assets and investors are international, the facts before the Court suggest that the Debtors’ most feasible administrative ‘nerve center’ has existed for some time in

the BVI”), aff’d, 2011 WL 4357421 (S.D.N.Y. Sept. 16, 2011), aff’d, 714 F.3d 127 (2d Cir. 2013).

51. “A debtor’s COMI should be based on its activities at or around the time the Chapter 15 petition is filed.” Morning Mist, 714 F.3d at 137; see also In re Ran, 607 F.3d 1017, 1025-26 (5th Cir. 2010) (“If the debtor’s main interests are in a particular country and third parties observe this situation, it should be irrelevant that the debtor’s interests were previously centered in a different country . . . . The presumption is that creditors will look to the law of the jurisdiction in which they perceive the debtor to be operating to resolve any difficulties they have with that debtor, regardless of whether such resolution is informal, administrative or judicial.”).<sup>3</sup> Thus, where, as here, a debtor is engaged in liquidation proceedings, the court will look to the governance and management of that debtor during the pendency of the liquidation to determine the COMI. See Morning Mist, 714 F.3d at 137 (“We hold that any relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis.”); In re Suntech Power Holdings Co., Ltd., 520 B.R. 399, 416 (Bankr. S.D.N.Y. 2014) (“The COMI analysis permits consideration of any relevant activities, including liquidation activities and administrative functions.”).

52. For example, in Suntech, the Bankruptcy Court for the Southern District of New York held that a liquidating debtor’s COMI was in the Cayman Islands, despite the fact that prior to the start of its Cayman Islands liquidation proceedings, the debtor’s day to day activities had been managed in Wuxi, China. Id. at 417. The court reasoned that when the Cayman Islands

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The Second Circuit in Morning Mist explained that although COMI should be determined based on the debtor’s activities at the time of filing of the Chapter 15 petition, courts “may consider the period between the commencement of the foreign insolvency proceeding and the filing of the Chapter 15 petition to ensure that a debtor has not manipulated its COMI in bad faith.” Morning Mist, 714 F.3d at 137. Here, there has been no “bad faith” attempts to shift COMI- rather, for the past five years, all of the Debtors’ activities and administration have been centered in the Cayman Islands.



Court had appointed provisional liquidators, who had assumed the supervision and control of the day to day management and liquidation proceedings of the Debtor, the COMI had shifted to the Cayman Islands. Id.

53. Here, the same factors as were present in Suntech court, and which have been applied by other bankruptcy courts as relevant to COMI, compel a determination that the Debtors' COMI is in the Cayman Islands. First, the central administration of the Debtors is carried out in the Cayman Islands, as established by the following facts:

- Each of the Debtors maintains, and always has maintained, its registered office in the Cayman Islands, under the laws of the Cayman Islands. See Mackay Decl. ¶ 44.
- From the time of the Supervision Orders in November 2009, all governance and management of the Debtors has been undertaken by the Petitioners, who have acted primarily out of the Cayman Islands, at all times under the supervision of the Cayman Islands Court. See id.
- On October 7, 2009, the Petitioners, acting in their roles as JOLs, published notices of the foreign proceedings in the Cayman Islands, which included contact information for their address in the Cayman Islands. See Mackay Decl. ¶ 26. Since that time, communication with creditors has primarily been initiated from the Cayman Islands, through, *inter alia*, the formal reporting requirements imposed by the Cayman Islands Court and informal communications with creditors. See Mackay Decl. ¶¶ 26-29.
- All meetings of the AwalCo Entities' Liquidation Committees (of which each of the AwalCo Entities' creditors is a member) take place in the Cayman Islands. See Mackay Decl. ¶ 29.
- All assets realized by the Petitioners for the Debtors have always been transferred to Cayman Islands bank accounts in the names of the Petitioners. See Mackay Decl. ¶ 30.
- All claims by or against the Debtors are venued and being litigated in the Cayman Islands. See Mackay Decl. ¶¶ 26, 44.

54. Moreover, the evidence also establishes that the Debtors' Cayman Islands COMI is reasonably ascertainable by creditors and third parties. The Debtors have always been held out

as Cayman Islands companies that are located in the Cayman Islands.<sup>4</sup> For over five years now, the Debtors have been engaged in highly publicized activities and insolvency proceedings in the Cayman Islands Court. All related notices have identified the Debtors as being located in the Cayman Islands. See Mackay Decl. ¶ 26. All liquidation committee meetings and creditor meetings have taken place in the offices of the JOLs' Cayman Islands counsel in the Cayman Islands. See Mackay Decl. ¶¶ 26-29. At this point in time, only four creditors have claims outstanding against the AwalCo Entities: Awal Bank, SICL, Saad Investments Finance Company Limited (“SIFCL”), and AHAB. Each of these creditors is a member of one or more liquidation committees. See Mackay Decl. ¶ 27. Further, of these four creditors, both SICL and SIFCL are located in the Cayman Islands. See In re British Am. Ins. Co. Ltd., 425 B.R. 884, 914 (Bankr. S.D. Fla. 2010) (noting that a foreign representative's activities should cause the debtor's creditors and third parties to look to the location of the foreign representative as the debtor's COMI).

55. In short, the evidence conclusively establishes that (i) the Debtors' central places of administration are in the Cayman Islands, and (ii) those central places of administration are reasonably ascertainable by creditors and other third parties, based on objective and publicly available facts. Under the Second Circuit's binding decision in Morning Mist, COMI is established if this is shown. See Morning Mist, 714 F.3d at 130 (“COMI lies where the debtor conducts its regular business, so that the place is ascertainable by third parties”); Guide to Enactment ¶ 145 (when making the COMI determination, the two primary factors are “the

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Under Cayman Islands law, every company must maintain a registered office in the Cayman Islands and the address of this office must be published by public notice. Cayman Companies Law §§ 50(1), 51(1). Additionally, “[a]ny member of the public shall be entitled to be informed by the Registrar, on request, of the location of the registered office of any company or exempted company registered under this Law.” Id. § 51(2).

location: (a) where the central administration of the debtor takes place, and (b) which is readily ascertainable by creditors.”).

**3. Other Factors Also Support a Cayman Islands COMI.**

56. The Petitioners respectfully submit that, because of the statutory presumption of a Cayman Islands COMI and because the principal COMI factors articulated by the Second Circuit in Morning Mist conclusively establish a Cayman Islands COMI, it is not necessary for this Court to consider any other factors. However, even if it does, additional factors further support a finding that the Debtors’ COMI is in the Cayman Islands, and those factors certainly do not point to a COMI in any other jurisdiction.

57. In Morning Mist, the Second Circuit identified several additional factors that may be relevant to the COMI analysis:

[T]he location of the debtor’s headquarters; the location of those who actually manage the debtor; the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.

714 F.3d at 137 (citing SPhinX, 351 B.R. at 103). Notably, the analysis of additional COMI factors is a flexible one, as “courts do not apply any rigid formula or consistently find one factor dispositive.” In re Betcorp Ltd., 400 B.R. at 290.

58. Similarly, the Guide to Enactment also provides that “[w]hen [the] principal factors do not yield a ready answer regarding the debtor’s [COMI], a number of additional factors concerning the debtor’s business may be considered.” Guide to Enactment ¶ 146. The additional factors suggested in the UNCITRAL Guide are non-exclusive of other potential factors, but all factors should be considered holistically and “give[n] greater or less weight to a given factor, depending on the circumstances of the particular case.” Id. The additional factors set forth in the Guide to Enactment include the following:

- a. the location of the debtor's books and records;
- b. the location where financing was organized or authorized, or from where the cash management system was run;
- c. the location in which the debtor's principal assets or operations are found;
- d. the location of the debtor's primary bank;
- e. the location of employees;
- f. the location in which commercial policy was determined;
- g. the site of the controlling law or the law governing the main contracts of the company;
- h. the location from which purchasing and sales policy, staff, accounts payable and computer systems were managed;
- i. the location from which contracts (for supply) were organized;
- j. the location from which reorganization of the debtor was being conducted;
- k. the jurisdiction whose law would apply to most disputes;
- l. the location in which the debtor was subject to supervision or regulation; and
- m. the location whose law governed the preparation and audit of accounts and in which they were prepared and audited.

Id. ¶ 147.

59. As demonstrated in detail below, the additional factors that may be considered in the COMI analysis either provide further support for a Cayman Islands COMI or, in some instances, are neutral or inapplicable. These factors do not establish, or even remotely suggest, that the Debtors' COMI is located in any jurisdiction other than the Cayman Islands. The other potentially relevant factors that have not otherwise been addressed above are as follows:

60. *The Location of the Debtors' Primary Assets.* As described above (see supra ¶ 20), the Debtors' approximately \$213 million in liquidated assets are split between three major financial institutions, all of which are located in the Cayman Islands.

61. *The Location of the Debtors' Books and Records.* The Debtors' books and records are and always have been located in the Cayman Islands. See Mackay Decl. ¶¶ 17, 44.

62. *The Location of the Debtors' Cash Management System.* The Debtors' cash management system is operated by Chris Johnson Associated, Ltd. ("CJA") (the firm of JOL and Petitioner Christopher Dorrien Johnson), and is entirely located in the Cayman Islands. See id. ¶ 33.

63. *The Location of the Debtors' Primary Bank.* The Debtors that hold cash assets (Debtors AMF, AFCL2 and AFCL5) each maintain accounts at in major financial institutions in the Cayman Islands, all of which are located in the Cayman Islands. See id. ¶ 30.

64. *The Location of the Debtors' Employees and Staff.* The Debtors currently do not independently retain any employees or staff. The day to day operations of the Debtors are managed by the employees and staff of CJA, all of whom work out of the Cayman Islands. The JOLs are represented in legal matters by HSM Chambers, a law firm located in the Cayman Islands. See id. ¶ 19; In re Betcorp Ltd., 400 B.R. at 290 (the COMI inquiry "examines the debtor's administration, management, and operations along with whether reasonable and ordinary third parties can discern or perceive where the debtor is conducting these various functions").

65. *The Location where Commercial Policy was Determined.* From the start of the liquidation proceedings in 2009, all commercial policies of the Debtors have been directed by the JOLs, operating primarily from their offices in the Cayman Islands. Policies determined in the

Cayman Islands include those used in gathering assets, establishing bank accounts in the Cayman Islands, and transferring funds to those accounts. See Mackay Decl. ¶ 44.

66. *The Location from which the Debtor's Reorganization was Conducted.* The Cayman Islands Proceedings have at all times been conducted in the Cayman Islands, under the supervision of the Cayman Islands Courts, with the Cayman Islands- and London-based Petitioners acting as official liquidators in those proceedings. See id. ¶ 26.<sup>5</sup>

67. Viewing the totality of the relevant contacts between the Debtors and the various jurisdictions with which it has contacts and interests, it is clear that no jurisdiction other than the Cayman Islands has a plausible claim as the Debtors' COMI. In comparison to the Debtors' substantial connections with the Cayman Islands, their connections with other jurisdictions are minimal and scattered (indeed there is little evidence showing present activities elsewhere), and therefore insufficient to support a finding that a COMI exists elsewhere.

68. Given (i) the statutory presumption of a Cayman Islands COMI, (ii) that the Debtors' central place of administration is and always has been in the Cayman Islands, (iii) that a Cayman Islands COMI is and was reasonably ascertainable by creditors and other third parties, and (iv) the Debtors' other material connections to the Cayman Islands, this a clear-cut case that the Debtors' COMI is in the Cayman Islands. Accordingly, the Cayman Islands Proceedings should be recognized as "foreign main proceedings" within the meaning of section 1502(4) of the Bankruptcy Code.

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Although two of the Petitioners are London residents, their activities on behalf of the AwalCo Entities have included a number of visits to the Cayman Islands, either for case management discussions with the Cayman Islands-based Petitioners and legal advisors, Court attendance, or a combination of both.

**E. In the Event the Cayman Islands Proceedings  
are Not Recognized as Foreign Main Proceedings,  
They Should be Recognized as Foreign Nonmain Proceedings.**

69. As discussed in detail above, the evidentiary record does not rebut the statutory presumption that the Debtors' COMI is in the Cayman Islands; to the contrary, the record affirmatively and clearly establishes a COMI in the Cayman Islands and no place else. However, in the event this Court concludes that the Cayman Islands Proceedings are not "foreign main proceedings," then the Petitioners submit that the Cayman Islands Proceedings should be recognized, in the alternative, as "foreign nonmain proceedings" within the meaning of section 1502(5) of the Bankruptcy Code.

70. As stated above, section 1517(a) of the Bankruptcy Code provides that "an order recognizing a foreign proceeding shall be entered if (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502." 11 U.S.C. § 1517(a)(1). Section 1502(5) of the Bankruptcy Code defines foreign nonmain proceeding as "a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment." 11 U.S.C. § 1502(5).

71. To qualify as a foreign nonmain proceeding, a debtor must have an establishment in the country in which the foreign proceeding is pending. Id. "Establishment" is defined in section 1502(2) of the Bankruptcy Code to mean "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). "Nontransitory economic activity" is not defined in the Bankruptcy Code, but the place in which such activity is conducted has been interpreted to mean "a place of business." See In re Ran, 607 F.3d at 1027 (citing Bear Stearns, 374 B.R. at 131). Similar to the time of evaluating a debtor's COMI, whether the debtor has an "establishment" in a country is also determined as of the time of the filing of the Chapter 15 petition. Id. at 1027.

72. Here, nontransitory economic activity in respect of the Debtors is and has for over five years been carried out in the Cayman Islands. The Debtors have always maintained registered offices in, and only in, the Cayman Islands. See Mackay Decl. ¶ 44. Moreover, upon the commencement of the Cayman Islands Proceedings and the Petitioners' appointment as official liquidators, the Cayman Islands-based Petitioners have actively managed the Debtors' business and assets from their offices in the Cayman Islands. See id.

73. The Debtors have "places of business" in the Cayman Islands because they have always maintained their only registered offices there and their winding up activities are based in that jurisdiction. Thus, the Debtors have an "establishment" in the Cayman Islands. See In re Millennium Global Emerging Credit Master Fund Ltd., 458 B.R. 63, 85 (Bankr. S.D.N.Y. 2011) (noting that the threshold requirements of an establishment are the existence of an asset in a country together with evidence of some management thereof within that country), aff'd, 474 B.R. 88 (S.D.N.Y. 2012).

74. Accordingly, in the event this Court denies recognition of the Cayman Islands Proceedings as foreign main proceedings, it should alternatively conclude that the Cayman Islands Proceedings are entitled to recognition as "foreign nonmain proceedings" within the meaning of 1502(5) of the Bankruptcy Code.

**F. The Requirements of Section 1515 Have Been Satisfied.**

75. Section 1515 of the Bankruptcy Code sets forth three technical requirements that must be satisfied to obtain recognition: (i) the foreign representative must file a petition for recognition; (ii) the foreign representative must establish that a foreign proceeding exists by providing a certified copy of the decision commencing the foreign proceeding; and (iii) the petition for recognition must be accompanied by a statement identifying all foreign proceedings



with respect to the debtor that are known to the foreign representative. See 11 U.S.C §§ 1515, 1517(a)(3); see also In re Ran, 607 F.3d 1017, 1021 (5th Cir. 2010).

76. Here, the Petitioners have filed with the Court: (i) the Recognition Petition; (ii) certified copies of the Supervision Orders, which affirm the existence of Cayman Islands Proceedings and the appointment of the Petitioners as official liquidators and foreign representatives, in satisfaction of section 1515(b)(1) of the Bankruptcy Code, see Recognition Petition, Exhibit B; and (iii) a statement verifying that the Petitioners are not aware of any foreign proceedings with respect to the AwalCo Entities other than the Cayman Islands Proceedings, in satisfaction of section 1515(c) of the Bankruptcy Code. See Recognition Petition, Exhibit C. As such, the Petitioners have satisfied each of the technical requirements for recognition pursuant to section 1515 of the Bankruptcy Code.

**G. Recognition of the Cayman Islands Proceedings  
Would Not Be Manifestly Contrary to U.S. Public Policy.**

77. Section 1517(a) of the Bankruptcy Code provides that entry of an order recognizing a foreign proceeding is “subject to section 1506.” Section 1506 of the Bankruptcy Code provides as follows:

Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

11 U.S.C. § 1506.

78. Notwithstanding the potential applicability of section 1506 in connection with the recognition determination, the Second Circuit and other courts have instructed that it must be construed very narrowly. See In re Fairfield Sentry, 714 F.3d at 138 (“Section 1506 does not create an exception for *any* action under Chapter 15 that may conflict with public policy, but only an action that is ‘manifestly contrary.’”) (emphasis in original); In re Ran, 607 F.3d at 1021

(“[T]he exception is intended to be invoked only under *exceptional circumstances* concerning matters of *fundamental importance* for the United States”) (emphasis added); In re Tri-Cont’l, 349 B.R. at 638 (“The word ‘manifestly’ in international usage restricts the public policy exception to *the most fundamental policies* of the United States. . . . [Its purpose] . . . is to emphasize that the public policy exception should be *interpreted restrictively* and that [provision] is only intended to be invoked under *exceptional circumstances* concerning matters of fundamental importance for the enacting State.”) (citing the Guide to Enactment) (emphasis added); In re Ephedra Prods. Liab. Litig., 349 B.R. 333, 336 (Bankr. S.D.N.Y. 2006) (same).

79. In this case, there is no U.S. public policy whatsoever that would be contravened by recognition of the Cayman Islands Proceedings. As noted above, since the enactment of Chapter 15, U.S. courts have routinely recognized Cayman Islands bankruptcy proceedings under the Cayman Companies Law. See supra ¶ 42 (collecting cases).

80. Indeed, recognizing the Cayman Islands Proceedings as foreign main proceedings would advance the express objectives of Chapter 15 set forth in section 1501 of the Bankruptcy Code, including: (i) the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor,” 11 U.S.C. § 1501(a)(3); and (ii) the “protection and maximization of the value of the debtor’s assets.” 11 U.S.C. § 1501(a)(4). Here, foreign main recognition will, *inter alia*, give the Debtors the benefit of the automatic stay in the United States, see 11 U.S.C. § 1520(a)(1), and give the Petitioners, as the Debtors’ foreign representatives, access to U.S. courts for relief in aid of the Cayman Islands Proceedings. See 11 U.S.C. § 1509(b). Thus, recognition will materially aid Petitioners’ efforts to maximize recoveries for, and provide for an equitable distribution of value among, all creditors.

**II. THE PETITIONERS REQUEST  
ADDITIONAL NECESSARY AND APPROPRIATE  
RELIEF PURSUANT TO BANKRUPTCY CODE SECTION 1521(a)**

81. Upon recognition of the Cayman Islands Proceedings, whether as foreign main or foreign nonmain proceedings, this Court is empowered to grant “any appropriate relief” pursuant to section 1521(a) of the Bankruptcy Code where such relief 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). Relief under section 1521(a) is appropriate so long as “the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

82. Here, the Petitioners respectfully request that this Court grant the following additional relief under section 1521(a): (i) granting the Petitioners the right, upon recognition, to examine witnesses, take evidence or obtain information concerning the Debtors’ assets, affairs, rights, obligations or liabilities, pursuant to section 1521(a)(4); and (ii) entrusting the Petitioners, as the Debtors’ foreign representatives, with the administration or realization of all of the Debtors’ assets within the territorial jurisdiction of the United States, pursuant to section 1521(a)(5).<sup>6</sup>

83. The ultimate goal of the Petitioners is to preserve and maximize realization on the assets of the Debtors for the benefit of their creditors. The additional relief requested by the Petitioners under section 1521(a) of the Bankruptcy Code will assist the Petitioners in carrying out their duties as official liquidators to achieve this goal, and will promote the effective

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11 U.S.C. §§ 1521(a)(4)-(5) provides, in relevant part, that “(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including – (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities; [and] (5) entrusting the administration or realization of all or part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court.”

administration of the Cayman Islands Proceedings. The Petitioners are aware of several assets in the territorial jurisdiction of the United States, including a significant asset in the form of Debtor AMF's interests in the Touradji Private Equity Offshore Fund Ltd. hedge fund and associated distributions. See Mackay Decl. ¶ 8. Under section 110 of the Cayman Companies Law, the Petitioners, as the Debtors' official liquidators, have the sole right and power to administer the assets of the Debtors' bankruptcy estates. Therefore, in order to maximize the recovery to creditors, the Petitioners respectfully request that they be entrusted to realize and administer the Debtors' assets within the territorial jurisdiction of the United States pursuant to Section 1521(a)(5).

84. Finally, in order to investigate, identify and fully realize the value the Debtors' assets, the Petitioners request the right to examine witnesses, take evidence, and obtain information concerning the Debtors' assets and obligations. In particular, the Petitioners, as official liquidators, are tasked with undertaking an investigation into the events and circumstances leading to the Cayman Islands Proceedings. As part of that investigation, the Petitioners may need to obtain evidence from parties in the United States. In addition, the relief is appropriate because the Petitioners are already vested with the power to take such discovery in the Cayman Islands Proceedings. See Cayman Companies Law § 103. Accordingly, section 1521(a)(4) expressly authorizes the Court to grant discovery, which is needed to properly administer the Debtors' estate.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, the Petitioners respectfully request that this Court enter the Order: (i) recognizing the Cayman Islands Proceedings as foreign main proceedings or, if not so recognized, as foreign nonmain proceedings; (ii) granting the Petitioners additional necessary and appropriate relief pursuant to section 1521(a) of the Bankruptcy Code; and (iii) granting such other and further relief as may be just and proper.

Dated: March 19, 2015  
New York, New York

Respectfully submitted,

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