

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
Lisa Laukitis
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM (UK) LLP
Peter Newman
40 Bank Street
Canary Wharf
London E14 5DS
Telephone: +44 20 7519 7000
Fax: +44 20 7519 7070

– and –

Justin M. Winerman (*pro hac vice*
admission pending)
Anthony R. Joseph (*pro hac vice* admission
pending)
155 North Wacker Drive
Chicago, Illinois 60606-1720
Telephone: (312) 407-0700
Fax: (312) 407-0411

Counsel to the Foreign Representatives

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

In re

MARKEL CATCO REINSURANCE FUND
LTD., *et al.*,

Debtors in Foreign Proceedings.¹

Chapter 15

Case No. 21-11733 (LGB)

(Joint Administration Requested)

¹ The Debtors are Bermuda companies registered with the Registrar of Companies in Bermuda. The Debtors' respective registration numbers are as follows: Markel CATCo Reinsurance Fund Ltd. (50599); CATCo Reinsurance Opportunities Fund Ltd. (44855); Markel CATCo Investment Management Ltd. (50576); Markel CATCo Re Ltd. (50602). Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda. The Debtors are "affiliates" as such term is defined in Bankruptcy Code section 101(2) and as used in Bankruptcy Rule 1015(b).

**VERIFIED PETITION FOR (I) RECOGNITION
OF FOREIGN MAIN PROCEEDINGS, (II) RECOGNITION OF
FOREIGN REPRESENTATIVES, AND (III) CERTAIN RELATED RELIEF**

Simon Appell of AlixPartners UK LLP and John C. McKenna of Finance & Risk Services Ltd., in their capacities as the joint provisional liquidators and authorized foreign representatives (in such capacities, the “**JPLs**” or the “**Foreign Representatives**”) of the above-captioned foreign debtors (collectively, the “**Debtors**”) seeking recognition of liquidation proceedings (the “**Provisional Liquidation Proceedings**”) under Part XIII of the Companies Act 1981 (as amended, the “**Bermuda Companies Act**”), currently pending before the Supreme Court of Bermuda (the “**Bermuda Court**”), and proposed reorganization proceedings concerning schemes of arrangement under section 99 of the Bermuda Companies Act (the “**Schemes**”) that will be filed before the Bermuda Court (the “**Scheme Proceedings**,” and together with the Provisional Liquidation Proceedings, the “**Bermuda Proceedings**”), by and through their undersigned counsel, respectfully submit this verified petition (together with each Debtor’s official form petition filed concurrently herewith, the “**Verified Petition**”) and represent as follows:

RELIEF REQUESTED

1. The Foreign Representatives request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Recognition Order**”) (a) granting recognition of the Bermuda Proceedings as foreign main proceedings pursuant to section 1517 of title 11 of the United States Code (the “**Bankruptcy Code**”); (b) recognizing each of the Foreign Representatives as a “foreign representative,” as defined in Bankruptcy Code section 101(24) in respect of the Bermuda Proceedings; and (c) granting certain related relief.

2. In support of this Verified Petition, the Foreign Representatives refer the Court to the (a) *Declaration of Simon Appell in Support of the Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Certain Related*

Relief (the “**Appell Declaration**”) and the (b) *Declaration of Kehinde George in Support of the Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Certain Related Relief* (the “**George Declaration**”), each of which have been filed contemporaneously herewith and are incorporated herein by reference.

JURISDICTION AND VENUE

3. The Court has jurisdiction to consider this Verified Petition pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(P). Venue is proper under 28 U.S.C. § 1410

4. These chapter 15 cases (the “**Chapter 15 Cases**”) have been properly commenced pursuant to Bankruptcy Code section 1504 by the filing of voluntary petitions for relief for recognition of the Bermuda Proceedings under Bankruptcy Code section 1515 on behalf of the Debtors (the “**Chapter 15 Petitions**”).

5. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 1504, 1507, 1510, 1515, 1517, 1520, 1521, and 1522, and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”).

BACKGROUND

I. The Debtors’ Business

6. **Background.** The Debtors are each incorporated in Bermuda and collectively comprise an investment fund business that provided investors the opportunity to invest in catastrophic risk reinsurance. In 2015, Markel Corporation, an entity incorporated in Virginia, (“**Markel Corporation**”), acquired the insurance-linked securities business operated by CATCo Investment Management Limited, a Bermuda incorporated company. As a result of this acquisition, Debtor Markel CATCo Investment Management Ltd. (the “**Manager**”) was

incorporated in order to take over the role of CATCo Investment Management Limited and to manage the investments of Debtor CATCo Reinsurance Opportunities Fund Ltd. (the “**Public Fund**”) and of the then-newly established Debtor Markel CATCo Reinsurance Fund Ltd. (the “**Private Fund**”).

7. **Corporate Information Regarding the Debtors.**

(a) **The Manager.** The Manager is a company incorporated in Bermuda under the Bermuda Companies Act on September 2, 2015. The Manager holds an investment business license issued by the Bermuda Monetary Authority (the “**BMA**”) under the Bermuda Investment Business Act 2003 and an insurance management license issued by the BMA under the Bermuda Insurance Act 1978 and its related regulations (the “**Bermuda Insurance Act**”). The Manager is an indirect, wholly owned subsidiary of Markel Corporation, and owns 100% of the voting shares of each of the Private Fund and the Reinsurer (as defined below).

(b) **The Private Fund.** The Private Fund is a mutual fund company incorporated in Bermuda under the Bermuda Companies Act on September 14, 2015, and registered as a segregated accounts company under the Bermuda Segregated Accounts Companies Act 2000, as amended (the “**Bermuda SAC Act**”), on November 9, 2015. The Private Fund is authorized by the BMA as an “Institutional Fund” under the Bermuda Investment Funds Act 2006.

(c) **The Public Fund.** The Public Fund is a mutual fund company incorporated in Bermuda under the Bermuda Companies Act on November 30, 2010. The Public Fund is publicly listed on the London Stock Exchange (Specialist Fund Segment) and the Bermuda Stock Exchange (the “**BSX**”).

(d) **The Reinsurer.** Debtor Markel CATCo Re Ltd. (the “**Reinsurer**”) is a reinsurance company incorporated under the Bermuda Companies Act on September 14, 2015,

and registered as a segregated accounts company under the Bermuda SAC Act. The Reinsurer is registered with the BMA as a Class 3 Insurer under the Bermuda Insurance Act.²

8. **Business Overview.** From 2015 to 2019, the Manager managed a reinsurance and retrocessional (or “**retro**”)³ reinsurance business known as “**Markel CATCo**,” through which capital raised from investors was invested in reinsurance products in accordance with its offering documents. The Manager, the Private Fund, the Public Fund, and the Reinsurer are collectively referred to herein as the “**CATCo Group**.”

9. As part of the Markel CATCo business, the Reinsurer provided catastrophic risk reinsurance and retro reinsurance to its clients, covering extraordinary losses incurred in respect of certain regions and certain natural disasters within a defined time period, usually a calendar year. The Reinsurer was funded by the Private Fund with private investor capital raised directly by the Private Fund, and raised indirectly by the Public Fund on the Specialist Fund Segment of the London Stock Exchange (with a secondary listing on the BSX). The reinsurance policies issued by the Reinsurer were fully collateralized, meaning that the Reinsurer held or holds liquid assets in a separate trust account for each reinsurance contract equivalent to the full potential liability under the contract. The collateral comprised the premium paid by the reinsurance clients, plus an allocation of the proceeds of investments from the Private Fund and, indirectly, the Public Fund.

10. In summary, capital was raised by soliciting investments in the Private Fund and the Public Fund, with such investor capital ultimately invested in the Reinsurer by way of individual funds operated by the Private Fund subscribing for shares in the Reinsurer. Each class

² Under the BMA insurance licensing system, Class 3 licensees include structured reinsurers writing third-party business; insurers writing direct policies with third-party individuals; and single-parent, group, association, agency or joint venture captives where more than 20 percent of net premiums written is from risks that are unrelated to the business of the owners.

³ Retrocessional reinsurance is reinsurance for a reinsurer.

of shares issued by the Reinsurer was linked to specific reinsurance products. During 2015 to 2019, the funds received over \$4.3 billion in subscriptions from third-party investors.

11. **Structure of Investments.** In respect of the structure of investments in the Markel CATCo business, private investors would invest directly through segregated accounts of the Private Fund and public and institutional investors invested in the Public Fund, which in turn invested directly in the Private Fund. In essence, therefore, the Public Fund operated as a “feeder fund,” through which public and institutional investors were able to invest indirectly in the Private Fund.

12. The Private Fund operated eight segregated accounts, or funds.⁴ Each fund was open to specific investors, with those investing directly into the Private Fund receiving shares in a particular segregated account. Six of these accounts (referred to as the “**Sub-Funds**”) in turn invested investor funds into an account known as the “**Master Fund**”; the Master Fund in turn invested predominantly in retro reinsurance products issued by the Reinsurer (the Master Fund and Sub-Funds are referred to collectively herein as the “**Retro Funds**” for this reason). The Public Fund invested directly in the Master Fund account. The Master Fund was therefore the account into which all investor capital, other than that invested in the remaining account operated by the Private Fund, namely, the “**Aquilo Fund**,” was pooled and subsequently deployed as investment in the Reinsurer. The Aquilo Fund offered investors exposure to non-retrocessional insurance products issued by the Reinsurer.

⁴ Specifically, the Private Fund operates eight funds: (i) Markel CATCo Diversified Fund (the “**Master Fund**”); (ii) Diversified Fund II; (iii) Limited Diversified Arbitrage Fund; (iv) Diversified Arbitrage Fund; (v) GTL Diversified Fund; (vi) Markel Diversified Fund; (vii) QIC Diversified Fund; and (viii) Aquilo Fund (collectively, the “**Funds**,” and each, a “**Fund**”). The Funds are segregated accounts of the Private Fund, meaning that each Fund is a separate individually managed pool of assets with its own investment objective and policies.

(cont'd)

13. **Reinsurance Operations.** The Reinsurer wrote two types of insurance business: (a) retro coverage for reinsurers (“**cedants**”)⁵ in respect of the Retro Funds and (b) ordinary reinsurance for insurers in respect of the Aquilo Fund. Each retro policy written by the Reinsurer is held within a separate segregated account, 100% of the share capital of which is owned by the Master Fund. Each reinsurance policy line signed by the Reinsurer is held within the Aquilo segregated account of the Reinsurer, 100% of the share capital of which is owned by the Aquilo Fund. Investors’ capital is held as cash and cash equivalent assets in a trust account held in New York for the benefit of the relevant cedant (each a “**Trust Account**”).

14. When loss events occur during the policy year, the Manager uses its judgment to set loss reserves that it believes will be sufficient to cover claims under the relevant policies. The total liability in respect of any policy is not typically known at the end of the policy year, as additional claims are made to the underlying insurer, and reinsurer, in periods after the policy year. Accordingly, following the expiry of the policy year, cedants can “trap” assets in the Trust Accounts to cover their ultimate exposure. As the total claims becomes more certain, and as claims are settled, the amount reserved may be reduced or increased. The net asset value (“**NAV**”), from time to time, of any policy is the amount by which the amount trapped exceeds the loss reserves under the policy.

15. **Management Operations.** The Manager is responsible for the day-to-day management of the Private Fund and the Reinsurer, and for providing certain management services to the Public Fund. The Manager provides such management services to the Private Fund, the Public Fund, and the Reinsurer pursuant to the terms of certain management agreements with such entities (the “**Management Agreements**”). Among other things, under their respective

⁵ A “cedant” is a company that purchases a reinsurance policy from a reinsurer.

Management Agreements, each of the Private Fund, the Public Fund, and the Reinsurer have provided broad indemnities to the Manager, its affiliates, and others in respect of, in summary, claims arising out of the performance by the Manager, and its officers, directors, employees, and affiliates, of their respective duties under the Management Agreements, other than claims for negligence, gross and/or willful negligence, willful default, fraud and dishonesty (depending on the particular wording used in each Management Agreement).

16. **Corporate and Fund Structure.** The corporate and fund structure of the CATCo Group is set out below. Note that the following diagram is simplified; there are more segregated accounts than those depicted here for illustration purposes.



II. Overview of the Debtors

A. Location of the Debtors' Domicile, Registered Office, and Headquarters

17. **Incorporated in Bermuda.** Each of the Debtors is incorporated in Bermuda. They have each carried on their business in Bermuda since their incorporation and continue to exist in accordance with the laws of Bermuda.

18. **Registered Office and Headquarters in Bermuda.** Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton, HM11, Bermuda. Under Bermuda law, the situs of shares in a company is at the registered office of the company at which the register of members should be kept, which in the case of each of the Debtors is Bermuda.

19. The physical location of the Debtors' corporate headquarters is at 8th Floor East, 141 Front Street, Hamilton HM19, Bermuda. The Debtors maintain offices in no other locations.

B. Location of the Debtors' Management

20. **Management in Bermuda.** The Debtors' central administration, management, and control takes place in Bermuda, and all key management decisions are generally made there, although certain decisions may be made telephonically from time to time.

21. **One of the JPLs in Bermuda.** The JPLs have been monitoring the Debtors' affairs since their appointment as JPLs pursuant to orders of the Bermuda court dated October 1, 2021 (the "**JPL Appointment Orders**"). The JPLs' role during such appointment includes, but is not limited to, evaluating and providing critical input on the proposed restructuring and supporting filings and applications to the Bermuda Court. Mr. McKenna, one of the JPLs, resides in Bermuda.

22. The JPL Appointment Orders also identify the JPLs as the properly and validly appointed "foreign representatives" of the Debtors, who are authorized to, among other things, represent the Debtors and act as the Debtors' agent in seeking any relief available to a "foreign representative" under chapter 15 of the Bankruptcy Code, including commencing the Chapter 15

Cases and otherwise seeking the assistance from the U.S. bankruptcy courts, including recognition and enforcement under the provisions of the Bankruptcy Code of any order entered by the Bermuda Court in relation to the Restructuring. *See* JPL Appointment Orders ¶¶ 2 & 3(j).⁶

23. **Board Meetings in Bermuda.** Board meetings of the Debtors are typically held telephonically, but a majority of the Debtors' board members reside in Bermuda. In particular, the locations of the board members are set forth below:

⁶ The JPL Appointment Orders provide:

that the JPLs be appointed as the duly authorised "foreign representatives," as that term is defined in the U.S. Bankruptcy Code, of the Company and be authorised to seek relief under chapter 15 of the U.S. Bankruptcy Code and to take such steps arising in connection therewith as the JPLs may consider appropriate.

JPL Appointment Orders ¶ 2. The powers of the JPLs under the JPL Appointment Orders include, among other things, to act as the Company's agent and representative in proceedings in such other jurisdictions as the JPLs deem necessary or appropriate in furtherance and support of the Restructuring Proposal, including proceedings under Chapter 15 of the U.S. Bankruptcy Code . . . ; to seek any relief available to a "foreign representative" under chapter 15 of the U.S. Bankruptcy Code, including commencing the Chapter 15 Cases, filing petitions and any other documents, motions, affidavits, or similar documents, and otherwise seeking assistance from the U.S. Bankruptcy Courts, including recognition and enforcement under the provisions of the U.S. Bankruptcy Code of any order entered by this court in relation to the Restructuring Proposal; and to take such other action in the United States of America or elsewhere as deemed necessary or appropriate in furtherance and support of the Restructuring Proposal.

JPL Appointment Orders ¶ 3(j).

Debtor	Director	Country of Residence
The Manager	Michael Toyer	Bermuda
	Andrew Barnard	Bermuda
	Jed Rhoads	Bermuda
The Reinsurer	Michael Toyer	Bermuda
	Federico Candiolo	Bermuda
	Jed Rhoads	Bermuda
	Andrew Barnard	Bermuda
The Private Fund	Michael Toyer	Bermuda
	Alastair Barbour	United Kingdom
	Robert Vrolyk	United States
The Public Fund	James Keyes	Bermuda
	Arthur Jones	Bermuda
	Margaret Gadow	United Kingdom

C. Location of the Debtors' Primary Assets

24. The primary assets of the Public Fund, the Private Fund, and the Reinsurer include amounts held in bank accounts held with HSBC in Bermuda. Further, the Debtors maintain the majority of their bank accounts in Bermuda. The Manager's primary assets include 100% of the voting stock of the Reinsurer and the Private Fund. The other Debtors also directly or indirectly hold shares in the Reinsurer.

D. Presence in Bermuda Marketplace

25. The Debtors have a significant presence in the Bermuda marketplace, including, but not limited to, through their registration and licensing with the BMA and the Public Fund's listing on the BSX. General meetings of the Public Fund held are also held in Bermuda, but most shareholders vote by proxy rather than in person.⁷

⁷ The Private Fund conducts its meetings and governance affairs via written resolutions and do not hold in-person meetings.

III. Events Leading to the Chapter 15 Cases

A. Business Losses and Run-Off

26. **Losses in 2017 and 2018.** In 2017 and 2018, the catastrophic risk reinsurance business of the CATCo Group was hit by historically large losses due to a number of large windstorms and forest fires. Consequently, investors in the Markel CATCo business suffered material losses on their investments.

27. **Run-Off.** Following a second year of losses in 2018, the Manager extended a special redemption option to investors of the Public Fund and the Private Fund and, in view of the majority uptake, decided to cease offering new investment in the Funds. Accordingly, at the end of the 2019 policy year, all remaining capital in the Funds, other than that trapped as collateral for insurance policies, was returned to investors.

28. Subsequently, on March 26, 2019, investors in the Public Fund voted to approve the orderly run-off of its investments in the Master Fund operated by the Private Fund. On July 25, 2019, the Manager announced that the Private Fund would cease accepting new investments and would not write any new business going forward through the Reinsurer. Following the Manager's announcement in July 2019, the Manager commenced the orderly run-off of the Reinsurer's existing portfolio.

29. The Manager has since continued to manage the retro and reinsurance portfolios, in order to run-off the policies in an orderly manner and, subject to approval from the BMA, return capital to investors as it is released from the Trust Accounts to the Reinsurer. The run-off has progressed smoothly since the Funds stopped accepting new subscriptions, with a total of approximately \$2.3 billion released and returned to investors as of August 2021. The Manager expects the run-off to be completed by January 2023.

B. Investor Litigation

30. In another relatively recent and highly significant development, prior to the public announcement of the Buy-Out Transaction (as defined below), two small investors in sub-funds operated by the Private Fund asserted and threatened claims, respectively, seeking to recover losses incurred on their investments in 2017 and 2018 (as described further below). A third investor has also recently threatened similar claims. Namely, in October 2020, one of these investors filed a claim in the United States against the former chief executive officer of the Manager, Anthony Belisle. In June 2021, a settlement was reached with respect to this claim.

31. Although the Manager was ultimately not named in this litigation, due to the indemnification obligations asserted by Mr. Belisle against the Manager as a former employee, the Manager facilitated the settlement from available insurance coverage after it and the Private Fund determined that it would be in the best interests of all investors to avoid what might become significant litigation defense costs that could exceed the claimed damages and have a detrimental impact on investor returns. The other investors have threatened, although not formally commenced, similar claims, and while the Manager and the Private Fund think these claims are unfounded, they remain unresolved.

32. As publicly disclosed, late in the fourth quarter of 2018, Markel Corporation received inquiries from the U.S. Department of Justice (the “**DOJ**”), the U.S. Securities and Exchange Commission (the “**SEC**”), and the BMA into loss reserves recorded in late 2017 and early 2018 at the Reinsurer. Notably, in response to these requests, Markel Corporation engaged Skadden, Arps, Slate, Meagher & Flom LLP (“**Skadden**”) to undertake a thorough review of the loss reserving process for catastrophic events that occurred in 2017 and reserve-related disclosures that the CATCo Group made. Without waiving any privilege attaching to the internal review, the Debtors note that such review was completed in April 2019 and Skadden found no evidence that

CATCo Group personnel acted in bad faith in exercising their business judgment in the setting of reserves and making related disclosures during late 2017 and early 2018. This supports the Debtors' conclusion that any potential investor claims, brought on the basis of the CATCo Group's loss reserving process, would not be meritorious.

33. After completing the internal review, Markel Corporation's outside counsel met with the governmental authorities and reported the findings. On September 27, 2021, the SEC notified Markel Corporation that it has concluded its investigation and it does not intend to recommend an enforcement action against the Manager. On September 28, 2021, Markel Corporation was advised by the DOJ that it has concluded its investigation and will not take any action against the Manager. Throughout the inquiries, Markel Corporation has proactively kept the BMA informed of the status of the SEC and the DOJ investigations, including the recent conclusion of those investigations. There are currently no pending requests from the BMA and it has been over a year since it has contacted Markel Corporation in relation to the governmental inquiries.⁸

34. While the Manager strenuously denies any liability with respect to these claims, and the Debtors do not believe that such claims would ultimately be meritorious, there is a risk that other investors could seek to assert "copycat" claims against the Manager or persons who are entitled to indemnification from the Manager (such as its officers, directors, or employees). In the event such further investor claims were to be asserted, the Manager would incur significant defense costs, along with any costs of settlements or payments of adverse judgments, resulting from such claims against the Manager or its officers, directors, or employees, and the Manager would be

⁸ See Markel Corporation Form 8-K, filed with the SEC on September 30, 2021.

entitled to indemnification from the Public Fund, the Private Fund, and the Reinsurer of such costs and payments.

35. Importantly, under Bermuda law, such investor claims (if successful) may, and associated indemnification obligations will, legally rank ahead of, and have priority of payment over, the interests of investors due to the investors holding equity interests. This could result in an inequitable distribution of fund assets, as investors who have asserted claims could be paid ahead of all other investors. Any claim and indemnification payments in excess of the limited available insurance coverage will directly decrease assets of all funds that would otherwise be available for distribution to all investors. Furthermore, the costs associated with such claims (if they were to be asserted), whether or not they are ultimately meritorious, would materially impair the ability of the Debtors to continue to return capital to investors as it becomes available for distribution. Consequently, any further distributions to investors are unlikely to be made until the risk of future investor claims being asserted against the CATCo Group is resolved.

IV. The Buy-Out Transaction and the Bermuda Proceedings

A. The Buy-Out Transaction

36. In order to: (a) resolve the uncertainty around further investor litigation; (b) ensure that all investors are treated alike, and none gain an unfair advantage through litigation; and (c) facilitate the expeditious return of funds to investors, Markel Corporation has decided to make a buy-out transaction available to the Private Fund and the Public Fund (the “**Buy-Out Transaction**” and the implementation of such Buy-Out Transaction, the “**Restructuring**”).

37. Under the Buy-Out Transaction, it is intended that the Schemes will be proposed by each of the Private Fund and the Public Fund (together, the “**Scheme Companies**”) in the near future to implement the Buy-Out Transaction, pursuant to which investors in the Private Fund and the Public Fund will receive an early return of all or substantially all of their remaining capital

invested in the Private Fund and Public Fund, as well as being entitled to any future upside on their investments. In exchange, investors will provide a release of any potential claims against the Debtors and related entities and individuals. Markel Corporation will provide funding to facilitate the Buy-Out Transaction and bear substantially all the down-side risk from any future reserve strengthening at the Reinsurer.⁹

38. On September 27, 2021, the Debtors filed the Provisional Liquidation Proceedings and the Manager publicly announced the Buy-Out Transaction to be proposed under the two Schemes. Following the public announcement of the Buy-Out Transaction, investors in both the Private Fund and the Public Fund are being given several weeks in which to provide an undertaking to support the Buy-Out Transaction and relevant Scheme, and in doing so become eligible to receive an early consent fee. During this period, the Debtors will engage with investors in the Public Fund and the Private Fund to obtain their support. The Debtors will also consult with the JPLs in relation to the Schemes, before proceeding to launch them.

39. Based on preliminary discussions held with investors to date, the Debtors expect that investors in the Public Fund and the Private Fund are likely to support the Buy-Out Transaction and agree to approve the Schemes. However, if sufficient investors do not agree to support the Schemes, the Private Fund and the Public Fund will need to determine the appropriate course of action, which could include proceeding to enter into full liquidation.¹⁰

40. Accordingly, the purpose of the Debtors commencing the Provisional Liquidation Proceedings is, in short, to provide a stable platform for them to carry out the Restructuring.

⁹ By this Verified Petition, the Debtors are not seeking to enforce the Schemes. The Debtors intend to file a subsequent motion to enforce the Schemes once they are commenced.

¹⁰ The Debtors intend to file supplemental notices with the Court upon commencement of the Schemes. If the Schemes are ultimately not commenced, the Debtors will update the Court of the status of the Bermuda Proceedings and amend their pleadings in the Chapter 15 Cases as appropriate.

Importantly, the appointment of the JPLs will provide protection for each Debtor and its assets from the claims of unsecured creditors, including litigation claimants, by imposing an automatic stay on all actions in Bermuda during the pendency of the Provisional Liquidation Proceedings in order to facilitate implementation of the Restructuring.

B. The Bermuda Proceedings

41. **The Provisional Liquidation Proceedings.** On September 27, 2021, the Debtors commenced the Provisional Liquidation Proceedings by filing winding-up petitions, true and correct copies of which are attached as Exhibits A-1 to A-4 to the George Declaration (the “**Winding-Up Petitions**”), with the Bermuda Court and making applications seeking the appointment of the JPLs as joint provisional liquidators of the Debtors with limited “light-touch” powers. The appointment of a provisional liquidator or the making of a winding-up order brings into effect an automatic statutory stay of actions and proceedings against the Debtors in Bermuda during the pendency of the Provisional Liquidation Proceedings, with the effect that actions may not be commenced or continued against the Debtors without leave of the Bermuda Court and subject to such terms as the Bermuda Court may impose. George Decl. ¶ 27.

42. On October 1, 2021, the Bermuda Court issued the JPL Appointment Orders appointing Simon Appell and John C. McKenna as the JPLs. The JPL Appointment Orders mandated that the JPLs are to, among other things, monitor, consult with, and oversee the Debtors’ existing board of directors. As such, while the Debtors’ existing boards of directors remain in place, the JPLs will provide a supervisory role and in that capacity ensure that stakeholders’ interests are considered. The JPL Appointment Orders also appointed the JPLs as the Debtors’ foreign representatives and authorized them to seek recognition of the Bermuda Proceedings under chapter 15 of the Bankruptcy Code. JPL Appointment Orders ¶ 2.

43. **The Scheme Proceedings.** The Debtors intend to commence the Scheme Proceedings to implement the Buy-Out Transaction in the near term.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

44. Section 1517 of the Bankruptcy Code identifies the requirements for recognition of a foreign proceeding. It provides that 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. *See* 11 U.S.C. § 1517(a). Recognition is mandatory if all three requirements of section 1517(a) are met. *See id.*; *In re Millard*, 501 B.R. 644, 653-54 (Bankr. S.D.N.Y. 2013) (holding section 1517(a) imposes a mandatory requirement for recognition when its requirements have been met).

45. As set forth below, the Foreign Representatives have satisfied the requirements of recognition of the Bermuda Proceedings.

I. The Debtors Are Eligible “Debtors” Under Chapter 15 of the Bankruptcy Code.

46. **Eligible Entities.** As a threshold matter, each of the Debtors is eligible to be a debtor in a chapter 15 case. For the purposes of a case under chapter 15, a “debtor” means an entity that is the subject of a foreign proceeding. *See* 11 U.S.C. § 1502(1). An entity, in turn, includes any person. *See* 11 U.S.C. § 101(15). And a person includes a corporation. Here, each Debtor is incorporated under the laws of Bermuda. *See id.* §§ 101(15), (41); Appell Decl. ¶¶ 46, 54. As shown below, the Debtors are in foreign proceedings. In addition, the Debtors do not fall within any of the categories of entities excluded from chapter 15 eligibility, as set forth in section 1501(c). Accordingly, each Debtor is a debtor eligible for chapter 15 relief under the Bankruptcy Code. *See* 11 U.S.C. §§ 1501(b), (c).

47. **Property in the United States.** Moreover, each Debtor is an eligible chapter 15 debtor under Bankruptcy Code section 109(a). Section 109(a) provides: “Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, *or property* in the United States, or a municipality, may be a debtor under this title.” 11 U.S.C. § 109(a) (emphasis added). Courts in this circuit have applied Bankruptcy Code section 109(a) to chapter 15 eligibility. *See, e.g., Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013) (“Section 103(a) makes all of Chapter 1 applicable to Chapter 15. Section 109(a)—within Chapter 1—creates a requirement that must be met by any debtor”).

48. Decisions interpreting Bankruptcy Code section 109(a) as applied to foreign debtors under other chapters of the Bankruptcy Code unanimously hold that a debtor satisfies the section 109 requirement even when it only has a nominal amount of property in the United States. *See GMAM Inv. Funds Tr. I v. Globo Comunicacoes e Participacoes S.A. (In re Globo Comunicacoes e Participacoes S.A.)*, 317 B.R. 235, 249 (S.D.N.Y. 2004) (stating that courts have repeatedly found that there is “virtually no formal barrier” to having federal courts adjudicate foreign debtors’ bankruptcy proceedings (citing *In re Aerovias Nacionales de Colom. S.A. (In re Aviane)*, 303 B.R. 1, 9 (Bankr. S.D.N.Y. 2003))). Effectively, if a debtor has any property in the United States, Bankruptcy Code section 109(a) is satisfied.

49. For example, courts have held that bank accounts held in New York and attorney retainers deposited in New York, among other things, satisfy the “property in the United States” eligibility requirement of Bankruptcy Code section 109(a). *See In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017) (citing a retainer held by New York counsel in a New York account as a factor satisfying Bankruptcy Code section 109(a)), *appeal dismissed*, 585 B.R. 31

(S.D.N.Y. 2018), *aff'd*, 764 F. App'x 46 (2d Cir. 2019); *In re U.S. Steel Can. Inc.*, 571 B.R. 600, 611 (Bankr. S.D.N.Y. 2017) (granting recognition of a case where the foreign representative had cited the presence of a retainer in New York); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 373–74 (Bankr. S.D.N.Y. 2014) (finding that the debtor “had property in the United States in the form of a retainer . . . that is sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code”).

50. Here, each of the Debtors satisfy the eligibility requirement of section 109(a), because each of the Debtors has property in the United States. Appell Decl. ¶ 47. The Reinsurer is party to multiple trust agreements with The Bank of New York Mellon as grantor (the “**Reinsurance Trust Agreements**”). Certain of the Reinsurance Trust Agreements are governed by New York law, pursuant to which funds are held in the Trust Accounts in New York. Appell Decl. ¶ 47. The Debtors each also have an interest in certain funds deposited with Skadden as a retainer for its services in connection with the Chapter 15 Cases, which funds are held in a client trust account in New York. Appell Decl. ¶ 47. Accordingly, the Debtors meet the general eligibility requirements of Bankruptcy Code section 109(a).

II. The Requirements of Section 1517(a) of the Bankruptcy Code Are Satisfied and Thus Recognition of the Bermuda Proceedings as a “Foreign Main Proceeding” and of the Foreign Representatives Is Appropriate.

51. As outlined above, under section 1517(a) of the Bankruptcy Code and subject to the public policy exception contained in section 1506, a foreign proceeding must be granted chapter 15 recognition if each of the following three requirements are met: “(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). As set forth below,

the Foreign Representatives satisfy each of the requirements of section 1517(a), and, therefore, the Bermuda Proceedings should be recognized as foreign main proceedings.

A. The Bermuda Proceedings Are Foreign Proceedings.

52. Each of the Bermuda Proceedings satisfies the definition of a “foreign proceeding” set forth in Bankruptcy Code section 101(23). *See* 11 U.S.C. § 101(23). Specifically, Bankruptcy Code section 101(23) defines a “foreign proceeding” as:

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.

See id.

53. Courts in this district have previously recognized Bermuda provisional liquidation and Bermuda scheme of arrangement proceedings as “foreign proceedings.” *See, e.g., In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *8 (Bankr. S.D.N.Y. July 2, 2021) (recognizing Bermuda liquidation proceedings as “foreign proceedings”); *In re VL Assurance (Bermuda) Ltd.*, No. 21-10682 (MG) (Bankr. S.D.N.Y. May 17, 2021) (recognizing Bermuda liquidation proceedings); *In re PB Life & Annuity Co.*, No. 20-12791 (SCC) (Bankr. S.D.N.Y. Jan. 5, 2021) (recognizing Bermuda provisional liquidation of insurance companies); *In re Spencer Capital Holdings Ltd.*, No. 20- 12287 (JLG) (Bankr. S.D.N.Y. Nov. 24, 2020) (recognizing Bermuda provisional liquidation); *In re Digicel Grp. One Ltd.*, No. 20-11207 (SCC) (Bankr. S.D.N.Y. June 17, 2020) (recognizing Bermuda provisional liquidation and scheme of arrangement); *In re PDV Ins. Co.*, No. 18-12216 (MEW) (Bankr. S.D.N.Y. Aug. 30, 2018) (recognizing Bermuda provisional liquidation); *In re Bd. of Dirs. of Hopewell Int’l Ins. Ltd.*, 238 B.R. 25, 48–49 (Bankr. S.D.N.Y. 1999) (holding that a proceeding in a Bermuda court for approval of a scheme of arrangement executed under the Companies Act was a “foreign proceeding” for

purposes of chapter 15), *aff'd sub nom., In re Petition of Bd. of Dirs. of Hopewell Int'l Ins. Ltd.*, 275 B.R. 699 (S.D.N.Y. 2002).

54. Similar to these Bermuda provisional liquidations and schemes of arrangement, the Bermuda Proceedings meet all of the elements of the definition of a “foreign proceeding” under the Bankruptcy Code. In any event, as further set forth in the Appell Declaration and the George Declaration, the facts here support a finding that the Bermuda Proceedings constitute “foreign proceedings” for the purposes of Bankruptcy Code section 101(23), because they are proceedings that are, among other things, (a) either judicial or administrative in character, (b) collective in nature, (c) in a foreign country, (d) authorized or conducted under a law related to insolvency or the adjustment of debts, (e) in which the debtor’s assets and affairs are subject to the control or supervision of a foreign court, and (f) for the purpose of reorganization or liquidation. Each of these elements is addressed below.

1. Each of the Bermuda Proceedings Is a “Proceeding.”

55. *First*, the Provisional Liquidation Proceedings and the Scheme Proceedings each are a “proceeding” within the meaning of Bankruptcy Code section 101(23). The hallmark of a “proceeding” is a “statutory framework that constrains a company’s actions and that regulates the final distribution of a company’s assets” and includes “acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice.” *In re Betcorp Ltd.*, 400 B.R. 266, 277–78 (Bankr. D. Nev. 2009).

56. The Bermuda Proceedings are proceedings in Bermuda governed by the Bermuda Companies Act, a statutory framework that, as set forth above, constrains a company’s actions, regulates the final distribution of a company’s assets, and includes acts and formalities set down in law so that courts, merchants, and creditors know them in advance. *See* George Decl. ¶ 58. Specifically, as described in more detail in the George Declaration, the Bermuda Companies Act

specifies the acceptable procedures for commencing provisional liquidation proceedings, appointing provisional liquidators, and implementing a Bermuda scheme, including, among other things, conducting the proceedings, designating classes of creditors or members, holding meetings, and voting. *See* George Decl. ¶¶ 22–42. The Bermuda Companies Act, as supplemented by Bermuda common law, also sets forth the permitted scope and powers of provisional liquidators and the standards for approval of Bermuda schemes by the applicable Bermuda court. *See* George Decl. ¶¶ 29–30, 43–47. The Bermuda Proceedings are therefore each a “proceeding” because the Bermuda Companies Act falls within the type of specific statutory framework described in the case law. *See, e.g., In re Betcorp*, 400 B.R. at 277–78; George Decl. ¶ 58.

2. The Bermuda Proceedings Are Judicial or Administrative in Character.

57. *Second*, the Bermuda Proceedings are both administrative and judicial in character. In Bermuda, a provisional liquidator may be appointed in a compulsory winding-up immediately after the presentation of the petition for a winding-up order to a Bermuda court and before the making of such a winding-up order. *See* George Decl. ¶ 26. Under Bermuda law, provisional liquidators are officers of the Bermuda Court and their role is usually to ascertain, oversee, and preserve the assets of a company. George Decl. ¶ 59. They are required to be independent from management and the company’s creditors and other stakeholders and are required to behave in an even-handed fashion among creditors and other stakeholders. George Decl. ¶ 59. The exercise of the JPLs’ power is subject to the control and supervision of the Bermuda Court. George Decl. ¶ 60. Thus, while many of a liquidator’s tasks are administrative in nature (*e.g.*, collecting, protecting, and realizing assets, reporting to the court and to creditors or members), provisional liquidation proceedings and scheme proceedings are also judicial in character because they are conducted before and under the supervision of the Bermuda Court. George Decl. ¶ 60.

58. Moreover, the proposed Scheme Proceedings are also judicial in character because there will be significant judicial involvement in the scheme process. George Decl. ¶ 61. For example, in *In re Board of Directors of Hopewell International Insurance Ltd.*, this Court stated, “[t]here is significant judicial involvement in [Bermuda-administered] scheme process[es].” 238 B.R. at 52. Specifically, the *Hopewell* decision looked to the following elements of the scheme of arrangement process as demonstrating that it was judicial in character:

There are two mandatory court appearances, the first, on the *ex parte* summons to convene the class meetings and the second, on the sanctioning of the scheme. . . . Both hearings required the court to review the materials submitted and evaluate them. . . . With regard to the second hearing, . . . the court plays a significant role in that it must assure itself that the scheme is in the best interests of creditors and members. Lastly, creditors and members had a plethora of opportunities to object to the scheme before it was sanctioned.

Id.

59. Here, the Schemes are proposed to be administered in the same manner as described above in *Hopewell* in that there will be a convening hearing, scheme meetings, and a sanction hearing. *See* George Decl. ¶ 61. Further, before the Bermuda Court sanctions a scheme of arrangement, it must be satisfied that the compromise or arrangement proposed thereunder is such that an intelligent and honest man, being a member of the relevant class of scheme creditors or members concerned and acting in respect of his interests, might reasonably approve it. *See* George Decl. ¶ 61. Without the Bermuda Court’s sanction, the Debtors cannot implement the proposed Schemes. *See* George Decl. ¶ 61. For the foregoing reasons, the proposed Scheme Proceedings are judicial in character.

3. The Bermuda Proceedings Are Collective in Nature.

60. ***Third***, the Bermuda Proceedings are collective in nature in that they provide due process to all parties whose rights and interests will be directly impacted by them. *See* George

Decl. ¶ 62. A proceeding is “collective” if it considers the rights and obligations of all creditors or relevant parties to the proceedings. *See In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010), *aff’d*, 728 F.3d 301 (3d Cir. 2013); *In re Betcorp*, 400 B.R. at 281; *see also In re ENNIA Caribe Holding N.V.*, 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018). When determining whether a proceeding is collective in nature, a court should examine both the law governing the foreign action and the parameters of the particular proceeding as defined in, for example, orders of a foreign tribunal overseeing the action. *In re Ashapura Minechem Ltd.*, 480 B.R. 129, 136 & n. 37, 141 & n. 85 (S.D.N.Y. 2012). “Other characteristics of a collective proceeding include: adequate notice to creditors under applicable foreign law, provisions for the distribution of assets according to statutory priorities, and a statutory mechanism for creditors to seek court review of the proceeding.” *Id.* at 137. Some courts have concluded that a collective proceeding can exist even where creditors are not allowed to participate, so long as the proceeding otherwise considers the rights and obligations of all creditors. *In re ENNIA Caribe Holding N.V.*, 594 B.R. at 638–39.

61. Bermuda proceedings, like the Provisional Liquidation Proceedings and the Scheme Proceedings, are also collective proceedings because they are conducted for the benefit of a company’s creditor or member body as a whole (or the whole class or classes of creditors or members intended to be bound by the scheme), and not just a single creditor or member. George Decl. ¶ 62. Provisional liquidators have the duty to obtain and protect a company’s property pursuant to the provisions of the Bermuda Companies Act, which further reflects the collective nature of Bermuda liquidation proceedings generally. George Decl. ¶ 62. The Bermuda Proceedings will be utilized to implement the restructuring pursuant to the proposed Schemes, which will be a Bermuda Court-supervised arrangement between the Debtors and their stakeholders. George Decl. ¶ 62.

62. As noted in the George Declaration, those parties that will be bound by the Schemes will be entitled to vote on the Schemes at the scheme meetings convened by order of the Bermuda Court, and are entitled to be heard at both the convening hearing and the sanction hearing. George Decl. ¶ 63. Moreover, no matter whether or how an individual stakeholder may have voted, the Schemes are intended to deal with stakeholders collectively, rather than any single stakeholder alone. George Decl. ¶ 63. Indeed, once the Schemes are implemented, subject to entry and delivery of the order sanctioning the Schemes to the Bermuda Registrar of Companies and satisfaction of all conditions precedent to the Restructuring, they will be binding on all stakeholders. George Decl. ¶ 63. Therefore, the Bermuda Proceedings are collective in nature.

4. The Bermuda Proceedings Are Located in a Foreign Country.

63. *Fourth*, the Bermuda Proceedings are or, in the case of the Scheme Proceedings once commenced, will be located in Bermuda. Following the commencement of the Provisional Liquidation Proceedings, the Bermuda Court exercised its authority by issuing the JPL Appointment Orders on October 1, 2021. Consequently, the Provisional Liquidation Proceedings are currently pending before the Bermuda Court, the court responsible for the resolution of insolvency cases in Bermuda. *See* George Decl. ¶¶ 13, 64. Further, the proposed Scheme Proceedings will also be commenced in and subject to the jurisdiction of the Bermuda Court. George Decl. ¶ 64. Therefore, the Bermuda Proceedings are located in Bermuda, a foreign country.

5. The Bermuda Proceedings Are Authorized or Conducted Under a Law Related to Insolvency or the Adjustment of Debts.

64. *Fifth*, the Bermuda Proceedings currently are or are contemplated to be authorized and conducted under the Bermuda Companies Act, which is the Bermudian law that governs the insolvency of companies in Bermuda. *See* George Decl. ¶ 65. More specifically, a liquidation proceeding is not only conducted under Bermuda's general insolvency law, the Bermuda

Companies Act, but also pursuant to the Companies (Winding-Up) Rules 1982 and Bermuda Common Law Principles, which are similar to the English Companies Act 1948, related statutory rules, and English common law. *See* George Decl. ¶ 65.

65. Further, a scheme of arrangement under the Bermuda Companies Act, like an English scheme, is a flexible mechanism that can be used to encompass a large variety of compromises or arrangements between a company and its stakeholders. In particular, a scheme of arrangement is a useful tool for restructuring all or a certain part of a company's debt or, as contemplated by the Schemes, effecting an agreement among a company and its creditors or members. *See* George Decl. ¶ 66. Accordingly, the Bermuda Proceedings are being conducted under a law related to insolvency or the adjustment of debts.

6. Under the Bermuda Proceedings, the Debtors' Assets and Affairs Are To Be Subject to the Control or Supervision of a Foreign Court.

66. *Sixth*, the Debtors' assets and affairs are to be subject to the control of the Bermuda Court during the Bermuda Proceedings. George Decl. ¶ 67. As noted in a leading treatise,

the requirement that the debtor's assets be subject to the control and supervision of a foreign court does not require that the foreign proceedings play out entirely in a judicial context like cases under the Bankruptcy Code. The ability of a party to ask for court assistance concerning the proceeding is sufficient to satisfy this element.

8 Collier on Bankruptcy ¶ 1501.03 (16th ed. 2018); *see also In re ENNIA Caribe Holding N.V.*, 594 B.R. at 640 (finding a proceeding subject to supervision of a foreign court where the court's approval was required to initiate or terminate the proceeding, modify certain contracts to which the debtor was party and compensate estate professionals). Here, the Bermuda Court will play multiple supervisory roles in the Bermuda Proceedings. Specifically, as noted above, the JPLs' powers are subject to the control and supervision of the Bermuda Court. *See* George Decl. ¶ 67. Under the JPL Appointment Orders, the JPLs are also to provide a written report to the Bermuda

Court from time to time and as the JPLs consider appropriate or as the Bermuda Court may otherwise request. *See* JPL Appointment Orders ¶ 3(e). All parties that will be bound by the Schemes will have the opportunity to seek the assistance of the Bermuda Court by raising objections at the convening hearing or the sanction hearing. George Decl. ¶ 67. The Bermuda Court also possesses the authority to sanction (or decline to sanction) a scheme following the sanction hearing, and thereby determine whether or not the Debtors will obtain the relief sought. George Decl. ¶ 67. The Debtors' assets and affairs and the JPLs are therefore subject to the control or supervision of a foreign court under the Bermuda Proceedings.

7. The Foreign Proceedings Are for the Purpose of Reorganization or Liquidation of the Debtors.

67. *Finally*, the purpose of Bermuda provisional liquidation proceedings and schemes of arrangement is liquidation or, as contemplated here, reorganization and, specifically, to effect an agreement among the company and its creditors and members. The purpose of the Bermuda Proceedings is an orderly distribution of the Debtors' assets to the creditors and members through the Restructuring to be effectuated by the Schemes. Appell Decl. ¶ 41. The JPLs are administering the Bermuda Proceedings together with the Debtors for the purpose of providing a stable platform for them to carry out the Restructuring. Appell Decl. ¶ 41.

68. For all the above reasons, the Bermuda Proceedings are proceedings for the purposes of reorganization or liquidation.

B. The Bermuda Proceedings Are “Foreign Main Proceedings.”

69. The Bermuda Proceedings are “foreign main proceedings” as defined by Bankruptcy Code section 1502(4). A “foreign main proceeding” is “a foreign proceeding pending in the country where the debtor has the center of its main interests[.]” 11 U.S.C. § 1502(4); *see also id.* § 1517(b)(1) (providing that an order of recognition as a foreign main proceeding will be

entered if the foreign proceeding “is pending in the country where the debtor has the center of its main interests”); *see also, e.g., Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127 (2d Cir. 2013) (affirming recognition of foreign main proceeding); *In re Ocean Rig UDW Inc.*, 570 B.R. at 705 (recognizing foreign main proceeding); *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416–17 (Bankr. S.D.N.Y. 2014) (same).

70. “In the absence of evidence to the contrary, the debtor’s registered office . . . is presumed to be the center . . . of main interests.” 11 U.S.C. § 1516(c); *see also In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012); *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 130 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008).

71. Pursuant to Bankruptcy Code section 1516(c), however, the center of main interests (“COMI”) presumption may be rebutted. The legislative history makes clear that “[t]he ultimate burden as to each element [of recognition] is on the foreign representative, although the court is entitled to shift the burden to the extent indicated in section 1516.” H.R. Rep. 109–31, pt. 1, 109th Cong. 1st Sess. at 112–113 (2005). Courts have identified various factors that are relevant in identifying a debtor’s COMI, none of which on their own are determinative, including: (a) the location of a debtor’s headquarters; (b) the location of those persons or entities that actually manage a debtor; and (c) the location of a debtor’s primary assets. *See In re Sphinx, Ltd.*, 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006), *aff’d sub nom., Krys v. Official Comm. of Unsecured Creditors of Refco Inc. (In re Sphinx Ltd.)*, 371 B.R. 10 (S.D.N.Y. 2007). In *In re Sphinx*, this Court explained that the factors should not be applied “mechanically” and “[i]nstead, they should be viewed in light of chapter 15’s emphasis on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor’s value.” *Id.*

72. When determining the “location of those who actually manage the debtor,” courts consider more than the location of the board of directors of the debtor. *See In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 273 (Bankr. S.D.N.Y. 2019) (citation omitted) (finding that the analysis of the location of management should be “flexible” and reflect the realities of a particular business). Notably, courts consider the location where the activities of liquidators and provisional liquidators take place in their COMI analyses. *See, e.g., In re Ocean Rig*, 570 B.R. at 706 (finding debtors’ COMI in the Cayman Islands because it was “the site where their business [had been] run” by joint provisional liquidators pursuant to a protocol with the directors); *In re Fairfield Sentry Ltd.*, No. 10 Civ. 7311(GBD), 2011 WL 4357421, at *5 (S.D.N.Y. Sept. 16, 2011), *aff’d*, 714 F.3d 127 (2d Cir. 2013) (finding COMI in the British Virgin Islands where British Virgin Islands liquidators had been “directing and coordinating” the debtor’s affairs since their appointment); *In re Betcorp*, 400 B.R. at 292 (finding COMI in Australia where “[t]he location of those that manage Betcorp—the liquidators” were located); *In re Suntech Power*, 520 B.R. at 418 (Bankr. S.D.N.Y. 2014) (finding COMI in the Cayman Islands where joint provisional liquidators had “centralized the administration of the Debtor’s affairs and its restructuring”). Indeed, courts have held that “the commencement of a provisional liquidation may have a profound effect on the business of the debtor.” *Id.* at 417. This is because provisional liquidation, among other things, “triggers a restructuring process on which the survival of the debtor’s traditional business may depend.” *Id.*

73. When analyzing the factors for determining a debtor’s COMI, the Second Circuit has held that COMI should be determined based on the debtor’s activities “at or around the time the Chapter 15 petition is filed.” *In re Fairfield Sentry*, 714 F.3d at 137.

74. **Registered Office.** Here, as set forth in the Appell Declaration, each of the Debtors has its registered office in Bermuda, creating a presumption that Bermuda is the COMI for the Debtors. Appell Decl. ¶ 54.

75. **Headquarters.** The physical location of the Debtors' headquarters is also in Bermuda. The Debtors maintain offices in no other locations. Appell Decl. ¶ 55.

76. **Location of Those Who Manage the Debtors.** The Debtors' central administration, management, and control takes place in Bermuda, and all key management decisions are generally made there. Further, board meetings of the Debtors are typically held telephonically but a majority of the Debtors' board members reside in Bermuda. Appell Decl. ¶ 55.

77. Since their appointment, the JPLs, one of whom resides in Bermuda, have monitored the Debtors' affairs, pursuant to the JPL Appointment Orders. In addition, the powers of the orders include, but are not limited to, evaluating and providing critical input on the proposed Restructuring and supporting filings and applications to the Bermuda Court. *See* JPL Appointment Orders ¶ 3¹¹; Appell Decl. ¶ 55. As a result, the JPLs have "centralized the administration of the Debtors['] affairs and [their] restructuring" in Bermuda. *See In re Suntech*, 520 B.R. at 418.

¹¹ Under the JPL Appointment Orders, the Bermuda Court granted the JPLs the power, among other things:

- (a) to review the financial position of the Company;
- (b) to consult with the Company in respect of and review, on an ongoing basis, all issues relating to the feasibility of the proposed restructuring of the Company by way of a scheme of arrangement in Bermuda, under section 99 of the Companies Act (the "**Restructuring Proposal**"), to be recommended by the directors of the Company and its advisers, including with respect to the necessary steps which need to be taken in order for the Restructuring Proposal to be successfully implemented to allow the Company to continue as a going concern;
- (c) to do all things the JPLs consider necessary to assist in the implementation of the Restructuring Proposal in consultation with the board of directors of the Company . . . and under the supervision of this Honourable Court;
- (d) to monitor the continuation of the business of the Company under the control of the Board and under the supervision of this Court;
- (e) to provide a written report to this Court from time to time and as the JPLs consider appropriate or as this Court may otherwise request;

(cont'd)

78. **Location of the Debtors' Primary Assets.** The primary assets of the Public Fund, the Private Fund, and the Reinsurer include amounts held in bank accounts held with HSBC in Bermuda. Further, the Debtors maintain the majority of their bank accounts in Bermuda. Appell Decl. ¶ 55. The Manager's primary assets include 100% of the voting stock of the Reinsurer and the Private Fund. The other Debtors also directly or indirectly hold shares in the Reinsurer. Appell Decl. ¶ 55. As noted in the George Declaration, the situs of shares in a Bermuda company is at the registered office of the company at which its register of members is kept. The situs of shares in a Bermuda company is therefore Bermuda. George Decl. ¶¶ 50, 70.

79. Accordingly, because the Debtors' COMI is located in Bermuda, the Bermuda Proceedings are foreign main proceedings, and, thus, the first element of Bankruptcy Code section 1517(a) is satisfied.

(f) to retain and employ, in consultation with the Company, barristers, attorneys and solicitors, and such other agents and professional persons in Bermuda, the United States and elsewhere as the JPLs deem appropriate for the purpose of advising and assisting in the execution of their powers;

(g) if deemed necessary and in the interests of the Company, to seek the assistance of this Court, as appropriate;

(h) if deemed necessary by the JPLs, to set up, maintain and control bank accounts at any bank or financial institutions situated in Bermuda or elsewhere as appropriate and accept deposits into and pay monies into such accounts for the purpose of meeting the payment of the fees and expenses of the JPLs including all costs, charges and expenses of their attorneys and all other agents, managers, accountants and other persons that they may employ subject to the appropriate procedures being agreed with the Company and the creditors of the Company as to how such fees will be determined;

(i) to render and pay invoices out of the assets of the Company for their own remuneration at their agreed upon rates (and this shall include all costs, charges and expenses of their attorneys, and all other agents, managers, accountants or other person that the JPLs may employ) and pay such invoices out of any retention fund created for that purpose;

(j) to act as the Company's agent and representative in proceedings in such other jurisdictions as the JPLs deem necessary or appropriate in furtherance and support of the Restructuring Proposal, including proceedings under Chapter 15 of the U.S. Bankruptcy Code . . .; to seek any relief available to a "foreign representative" under chapter 15 of the U.S. Bankruptcy Code, including commencing the Chapter 15 Cases, filing petitions and any other documents, motions, affidavits, or similar documents, and otherwise seeking assistance from the U.S. Bankruptcy Courts, including recognition and enforcement under the provisions of the U.S. Bankruptcy Code of any order entered by this court in relation to the Restructuring Proposal; and to take such other action in the United States of America or elsewhere as deemed necessary or appropriate in furtherance and support of the Restructuring Proposal; and

(k) to do all things incidental to the exercise of the foregoing powers.

JPL Appointment Order ¶ 3.

C. In the Alternative, the Bermuda Proceedings Are Foreign Nonmain Proceedings.

80. In the alternative, if this Court concludes that the Bermuda Proceedings are not “foreign main proceedings,” the Bermuda Proceedings should be recognized as “foreign nonmain proceedings” under Bankruptcy Code section 1502(5).

81. A “foreign nonmain proceeding,” is defined as “a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment.” *See* 11 U.S.C. § 1502(5); *see id.* § 1517(b)(2) (providing that an order of recognition as a “foreign nonmain proceeding” shall be entered “if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending”). An establishment is “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(2); *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 277. “Nontransitory economic activity” is not defined in the Bankruptcy Code, but has been referred to as “a local place of business.” *See In re Creative Fin. Ltd.*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016) (holding that in order to have an establishment in a country a debtor must “conduct business in that country”); *see also In re Bear Stearns*, 374 B.R. at 131 (holding that the requirements of a “place of operations” from which “economic activity” is conducted require a seat for local business activity that has a local effect on the markets).

82. At least one court has also found that the presence of liquidators is relevant to the determination of whether a debtor has an establishment in that location. *See, e.g., In re Millennium Glob. Emerging Credit Master Fund Ltd. (Millennium Glob. I)*, 458 B.R. 63, 86 (Bankr. S.D.N.Y. 2011), *aff’d*, 474 B.R. 88 (*Millennium Glob. II*) (S.D.N.Y. 2012) (finding that Bermuda proceedings should be recognized as foreign main proceedings or, in the alternative, foreign nonmain proceedings, after considering, among other factors, the fact that the liquidators are

subject to the control of the court in Bermuda); *Millennium Glob. II*, 474 B.R. at 94 (affirming *Millennium Glob. I* and noting, among other things, that “Bermuda is where the liquidation proceedings are taking place, under the supervision of the Bermuda court”). As with determining a debtor’s COMI, the determination of whether a debtor has an establishment in a country is determined as of the time of the filing of the chapter 15 petition. *See Lavie v. Ran*, 406 B.R. 277, 284-85 (S.D. Tex. 2009) *aff’d sub nom. In re Ran*, 607 F.3d 1017 (5th Cir. 2010); *Beveridge v. Vidunas (In re O’Reilly)*, 598 B.R. 784, 803 (Bankr. W.D. Pa. 2019).

83. In this case, the Debtors have demonstrated, at the least, an establishment in Bermuda. The JPLs have centralized the Debtors’ restructuring activities in Bermuda. Specifically, as noted above, they have been monitoring the Debtors’ affairs and evaluating and providing critical input on the proposed Restructuring, and have supported filings and applications to the Bermuda Court. In addition, as noted above, the Debtors have each carried on their business in Bermuda since their incorporation and continue to exist in accordance with the laws of Bermuda. Appell Decl. ¶ 19. Further, the Debtors’ primary assets are in Bermuda. The Debtors also have a significant presence in the Bermuda marketplace as the Public Fund trades on the BSX and general meetings of the Public Fund are also held in Bermuda, but most shareholders vote by proxy rather than in person. Appell Decl. ¶ 27. These facts are sufficient, at a minimum, to support the finding of an “establishment” in Bermuda.

III. The Chapter 15 Cases Have Been Commenced by Duly Authorized Foreign Representatives.

84. The second requirement for recognition of a foreign proceeding under Bankruptcy Code section 1517(a) is that the foreign representative applying for recognition be a “person or body.” *See* 11 U.S.C. § 1517(a)(2). Bankruptcy Code section 1516(a) provides that a bankruptcy court may presume that the person petitioning for chapter 15 recognition is a foreign representative

if the decision or certificate from the foreign court so indicates. *See id.* § 1516(a) (“If the decision or certificate [commencing or affirming the existence of a foreign proceeding and appointing the foreign representative] indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.”). The term “foreign representative” is defined in Bankruptcy Code section 101(24) as:

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).

85. Here, the JPL Appointment Orders, which are decisions from the foreign court, indicate that the JPLs are the duly authorized foreign representatives (as defined in the Bankruptcy Code) of the Debtors, who may, among other things, file for chapter 15 recognition. *See* JPL Appointment Orders ¶ 2 & 3(j). In particular, pursuant to the JPL Appointment Orders, the Foreign Representatives were appointed by the Bermuda Court as joint provisional liquidators of the Debtors and they have been authorized by the Bermuda Court to, among other things, seek recognition and any relief available to a “foreign representative” under chapter 15 of the Bankruptcy Code, including commencing the Chapter 15 Cases, filing petitions and any other documents, motions, affidavits, or similar documents, and otherwise seeking assistance from the U.S. bankruptcy courts, including recognition and enforcement under the provisions of the Bankruptcy Code of any order entered by the Bermuda Court in relation to the Restructuring; and to take such other action in the United States of America or elsewhere as deemed necessary or appropriate in furtherance and support of the Restructuring. JPL Appointment Orders ¶ 3(j). Therefore, the Court may presume that the JPLs are duly authorized foreign representatives. In

addition, as “individuals,” the proposed Foreign Representatives are each a “person” under section 101(41) of the Bankruptcy Code. *See* 11 U.S.C. § 101(41).

86. Moreover, courts in this district have previously acknowledged that a liquidator, or provisional liquidator, appointed in Bermuda constitutes a “foreign representative” for chapter 15 purposes. *See, e.g., In re Gerova Fin. Grp. Ltd.*, Case No. 12-13641 (ALG) (Bankr. S.D.N.Y. Oct. 11, 2012) (joint provisional liquidators appointed pursuant to Bermuda law were authorized as duly appointed foreign representatives within the meaning of section 101(24)); *In re Inverness Distrib. Ltd. f/k/a Morgan Creek Int’l Ltd.*, Case No. 11-12106 (SCC) (Bankr. S.D.N.Y. June 1, 2011) (same); *In re Lehman Re Ltd.*, Case No. 09-14884 (JMP) (Bankr. S.D.N.Y. Sept. 24, 2009) (same); *In re Bluepoint Re Ltd.*, Case No. 08-13169 (REG) (Bankr. S.D.N.Y. Sept. 29, 2008) (same).

87. Thus, the proposed Foreign Representatives have met the requirements of Bankruptcy Code section 101(24) and are the Debtors’ “foreign representatives” as defined therein. *See* 11 U.S.C. § 1516(a) (“If the decision [commencing the foreign proceeding] . . . indicates . . . that the person or body is a foreign representative, the court is entitled to so presume.”); *In re SphinX, Ltd.*, 351 B.R. at 116-17 (holding that section 101(24) of the Bankruptcy Code was satisfied where foreign representatives submitted a “copy of the Cayman Court’s order appointing them to administer the [d]ebtors’ winding up under [Cayman law] and authorizing their commencement of these chapter 15 cases”).

IV. The Verified Petition Meets the Requirements of Bankruptcy Code Section 1515.

88. The Chapter 15 Cases were duly and properly commenced as required by Bankruptcy Code section 1504 by filing petitions for recognition pursuant to Bankruptcy Code section 1515(a). Pursuant to Bankruptcy Code section 1515(b), a petition for recognition must be accompanied by one of the following:

- (i) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;
- (ii) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
- (iii) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

11 U.S.C. § 1515(b).

89. In satisfaction of section 1515(b), certified copies of the JPL Appointment Orders are attached to the Chapter 15 Petitions as Exhibit B. As discussed above, the JPL Appointment Orders constitute a decision of the Bermuda Court commencing the Provisional Liquidation Proceedings and appointing the JPLs as the foreign representatives. JPL Appointment Orders ¶ 2 & 3(j) (ordering that the JPLs have the power “to act as the Company’s agent and representative in proceedings in such other jurisdictions as the JPLs deem necessary or appropriate in furtherance and support of the Restructuring Proposal, including proceedings under Chapter 15 of the Bankruptcy Code; to seek any relief available to a ‘foreign representative’ under chapter 15 of the Bankruptcy Code . . . and to take such other action in the United States of America or elsewhere as deemed necessary or appropriate in furtherance and support of the Restructuring Proposal”).¹²

90. The Chapter 15 Petitions were accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules, including (a) a corporate ownership statement containing the information required by Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which any of the Debtors are a party at the time of the filing of these chapter 15 cases, and (iii) all entities

¹² The Debtors reserve the right to supplement these materials in advance of or at the final hearing on the Verified Petition.

against whom provisional relief is being sought under Bankruptcy Code section 1519; (c) a statement identifying all foreign proceedings with respect to the Debtors that are known to the Foreign Representatives; and (d) certified copies of the JPL Appointment Orders. Therefore, the Verified Petition meets the requirements of Bankruptcy Code section 1515 in satisfaction of the third requirement under Bankruptcy Code section 1517(a). *See In re Bear Stearns*, 374 B.R. at 127 (“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.”).

V. The Relief Requested Is Consistent with U.S. Public Policy and Policy Behind the Bankruptcy Code.

91. The purpose of chapter 15 is set forth in Bankruptcy Code section 1501 and includes:

- (i) cooperation between (A) courts of the United States, the United States Trustee, trustees, examiners, debtors, and debtors in possession; and (B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
- (ii) greater legal certainty for trade and investment;
- (iii) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor;
- (iv) protection and maximization of the value of the debtor’s assets; and
- (v) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. § 1501. Recognition of the Bermuda Proceedings as foreign main proceedings comports with all of these objectives.

92. Bankruptcy Code section 1506 provides that nothing in chapter 15 shall prevent the Court from refusing to take an action otherwise required therein if such action would be manifestly contrary to the public policy of the United States. This public policy exception, however, is

narrowly construed. *See, e.g., In re Sino-Forest Corp.*, 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013); *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010); *Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de CV (In re Vitro S.A.B. de CV)*, 701 F.3d 1036, 1069 (5th Cir. 2012). Moreover, the public policy exception must be viewed in light of one of the fundamental goals of the Bankruptcy Code—the centralization of disputes involving the debtor. *See, e.g., Shugrue v. Air Line Pilots, Ass’n, Int’l (In re Ionosphere Clubs, Inc.)*, 922 F.2d 984, 989 (2d Cir. 1990) (“The Bankruptcy Code ‘provide[s] for centralized jurisdiction and administration of the debtor, its estate and its reorganization in the Bankruptcy Court’” (alteration in original) (citation omitted)).

93. The Bermuda Proceedings share several common judicial principles with the Bankruptcy Code. The Bermuda Companies Act requires, among other things, the following to occur in order for a scheme of arrangement to become legally binding: (a) notification to affected parties of the date and time of the court-directed scheme meeting, similar to the notice and hearing requirement under the Code and (b) the issuance of an “explanatory statement,” similar to the disclosure statement under chapter 11, to the affected creditors explaining the effect of the scheme of arrangement and addressing certain other statutory requirements. *See* George Decl. ¶ 36.

94. Recognition of the Bermuda Proceedings as foreign main proceedings will enable the Debtors to fully implement the Restructuring. By recognizing the Bermuda Proceedings and granting the relief requested, the process of resolving any residual claims against the Debtors would be centralized in Bermuda, which is a fundamental goal of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 922 F.2d at 989; *Cornfeld v. Invs. Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y. 1979) (noting that “the firm policy of American courts is the staying of actions against a corporation which is the subject of a bankruptcy proceeding in another

jurisdiction”), *aff’d*, 614 F.2d 1286 (2d Cir. 1979). As such, recognition of the Bermuda Proceedings would promote the policies underlying the Bankruptcy Code and is not manifestly contrary to U.S. public policy.

95. For all of the reasons set forth above, the Foreign Representatives submit that all of the requirements set forth in section 1517(a) have been satisfied and, thus, the entry of the Proposed Order by the Court recognizing the Bermuda Proceedings as “foreign main proceedings,” or in the alternative, as “foreign nonmain proceedings,” is proper.

NOTICE

96. Notice of this Motion will be provided to: (a) the Debtors, (b) the Office of the United States Trustee for the Southern District of New York, (c) parties entitled to notice under Bankruptcy Rule 2002(q)(1), (d) all other parties that request notice in these cases pursuant to Bankruptcy Rule 2002 prior to the date of such service, (e) all parties the Foreign Representatives believe to be affected by the Relief Requested pursuant to Local Bankruptcy Rule 9013-1, and (f) all other parties that this Court may direct. The Foreign Representatives submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

97. No previous request for the relief sought herein has been made to the Court or any other court.

CONCLUSION

WHEREFORE, the Foreign Representatives respectfully submits that the Verified Petition satisfies the requirements for the recognition of the Bermuda Proceedings, and respectfully request that this Court enter the Proposed Order (a) recognizing the Bermuda Proceedings as “foreign main proceedings” pursuant to chapter 15 of the Bankruptcy Code; (b) recognizing each of the Foreign Representatives as a “foreign representative,” as defined in Bankruptcy Code section 101(24) in respect of the Bermuda Proceedings; and (c) granting such other relief as may be just and proper.

Dated: October 5, 2021
New York, New York

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP

/s/ Lisa Laukitis

Lisa Laukitis
One Manhattan West
New York, New York 10001
Telephone: (212) 735-3000
Fax: (212) 735-2000

– and –

Justin M. Winerman (*pro hac vice* admission pending)
Anthony R. Joseph (*pro hac vice* admission pending)
155 North Wacker Drive
Chicago, Illinois 60606-1720
Telephone: (312) 407-0700
Fax: (312) 407-0411

– and –

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM (UK) LLP

Peter Newman
40 Bank Street
Canary Wharf
London E14 5DS
Telephone: +44 20 7519 7000
Fax: +44 20 7519 7070

Counsel to the Foreign Representatives

VERIFICATION OF PETITION

I, Simon Appell, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:

I am a Managing Director at AlixPartners UK LLP and one of the duly appointed foreign representatives of the Debtors. As such, I have full authority to verify the foregoing Verified Petition on behalf of the Debtors.

I have read the foregoing Verified Petition, and I am informed and believe that the factual 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: October 5, 2021
London, United Kingdom

/s/ Simon Appell

By: Simon Appell

Title: Managing Director

AlixPartners UK LLP

EXHIBIT A

Proposed Order

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

In re

MARKEL CATCO REINSURANCE FUND
LTD., *et al.*,

Debtors in Foreign Proceedings.¹

Chapter 15

Case No. 21-11733 (LGB)

(Jointly Administered)

**ORDER GRANTING (I) RECOGNITION
OF FOREIGN MAIN PROCEEDINGS, (II) RECOGNITION OF
FOREIGN REPRESENTATIVES, AND (III) CERTAIN RELATED RELIEF**

Upon the Verified Petition² of the Foreign Representatives of the above-captioned debtors (the “**Debtors**”) for entry of an order (a) recognizing the Bermuda Proceedings as “foreign main proceedings” pursuant to chapter 15 of the Bankruptcy Code; (b) recognizing each of the Foreign Representatives as a “foreign representative,” as defined in section 101(24) of the Bankruptcy Code (as defined below) in respect of the Bermuda Proceedings; and (c) granting certain related relief; and the Court having reviewed the Verified Petition and having heard the statements of counsel regarding the relief requested in the Verified Petition at a hearing before the Court (the “**Recognition Hearing**”); and this Court having jurisdiction to consider the Verified Petition and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Verified Petition and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. § 1410; and adequate and sufficient notice of the filing of the Verified Petition having been given

¹ The Debtors are Bermuda companies registered with the Registrar of Companies in Bermuda. The Debtors’ respective registration numbers are as follows: Markel CATCo Reinsurance Fund Ltd. (50599); CATCo Reinsurance Opportunities Fund Ltd. (44855); Markel CATCo Investment Management Ltd. (50576); Markel CATCo Re Ltd. (50602). Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda.

² Capitalized terms used but not defined herein shall have the meanings ascribed such terms in the Verified Petition.

by the Foreign Representatives under the circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief sought in the Verified Petition is necessary and beneficial to the Debtors; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

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

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

C. The Chapter 15 Cases were properly commenced pursuant to Bankruptcy Code sections 1504, 1509, and 1515.

D. The Petition meets the requirements of Bankruptcy Code section 1515 and Bankruptcy Rules 1007(a)(4) and 2002.

E. The Bermuda Proceedings are "foreign proceedings" within the meaning of Bankruptcy Code section 101(23).

F. The Bermuda Proceedings are located in Bermuda, which is the country where the Debtors' center of main interests is located and, as such, the Bermuda Proceedings are entitled to recognition as "foreign main proceedings" pursuant to Bankruptcy Code sections 1502(4) and 1517(b)(1).

G. The Bermuda Proceedings are entitled to recognition by this Court pursuant to Bankruptcy Code sections 1515 and 1517(a).

H. The Foreign Representatives are each a person within the meaning of Bankruptcy Code section 101(41) and are the duly appointed foreign representatives of the Debtors within the meaning of Bankruptcy Code section 101(24).

I. The relief granted hereby pursuant to Bankruptcy Code sections 1515, 1517, and 1520 is necessary and appropriate to effectuate the purposes of chapter 15, to protect the Debtors and the interests of their creditors and other parties-in-interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code.

J. Each of the injunctions contained in this order (i) is within this Court's jurisdiction, (ii) is essential to the success of the Bermuda Proceedings, (iii) is an integral element of the Bermuda Proceedings or to their effectuation, (iv) confers material benefits on, and is in the best interests of, the Debtors and their stakeholders, and (v) is important to the overall objectives of the Schemes.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Verified Petition and relief requested therein is GRANTED as set forth herein.
2. The Bermuda Proceedings are granted recognition as foreign proceedings as defined in Bankruptcy Code section 101(23) and pursuant to Bankruptcy Code section 1517.
3. The Bermuda Proceedings are collective, court-supervised proceedings governed in accordance with applicable Bermuda law, as it may be amended from time to time, and are granted recognition as foreign main proceedings pursuant to Bankruptcy Code section 1517(b)(1).

4. All provisions of Bankruptcy Code section 1520 apply in the Chapter 15 Cases, including the stay under Bankruptcy Code section 362 throughout the duration of the Chapter 15 Cases or until otherwise ordered by this Court.

5. Upon entry of this Order, the Bermuda Proceedings and all prior orders of the Bermuda Court shall be and hereby are granted comity and given full force and effect in the United States, and all entities (as that term is defined in Bankruptcy Code section 101(15)), other than the JPLs and their expressly authorized representatives and agents, are hereby enjoined from:

- (a) execution against any of the Debtors' assets;
- (b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim, including without limitation any and all unpaid judgments, settlements, or otherwise against the Debtors in the United States;
- (c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, set-off, or other claim against the Debtors or any of their property;
- (d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the JPLs;
- (e) commencing or continuing an individual action or proceeding concerning the Debtors' assets, rights, obligations, or liabilities to the extent they have not been stayed pursuant to section 1520(a) of the Bankruptcy Code; and
- (f) terminating contracts or otherwise accelerating obligations thereunder;

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

6. The Foreign Representatives are the duly appointed and authorized representatives of the Bermuda Proceedings within the meaning of Bankruptcy Code section 101(24), and are authorized to act on behalf of the Debtors in the Chapter 15 Cases.

7. The Foreign Representatives are hereby established as the representatives of the Debtors with full authority to administer the Debtors' assets and affairs in the United States.

8. The Foreign Representatives, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or the Local Bankruptcy Rules, or orders of this Court.

9. No action taken by the Foreign Representatives, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the Bermuda Proceedings, this Order, the Chapter 15 Cases, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under Bankruptcy Code sections 306 and 1510.

10. This order is without prejudice to the Foreign Representatives requesting any additional relief in the Chapter 15 Cases, including seeking recognition and enforcement in the United States of any further orders issued by the Bermuda Court, including any final order sanctioning the Schemes, as such order may be amended or supplemented from time to time.

11. The Foreign Representatives are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: New York, New York

_____, 2021

HON. LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE