

Texas Bankruptcy Court Applies Section 109(a) to Chapter 15 Recognition, Aligning With Second Circuit Ruling While Rejecting Eleventh Circuit Decision

*By R. Craig Martin and Erik F. Stier**

In this article, the authors explore a decision by a Texas bankruptcy court holding that that the Bankruptcy Code requires a foreign debtor to have a domicile, a place of business, or property in the U.S. as a pre-condition to Chapter 15 recognition. The authors then offer key takeaways for businesses.

The U.S. Bankruptcy Court for the Southern District of Texas held in *In re Siu-Fung Ceramics Holdings* that the Bankruptcy Code requires a foreign debtor to have a domicile, a place of business, or property in the U.S. as a pre-condition to Chapter 15 recognition.

This decision aligns with the Second Circuit's *In re Barnet* and rejects the Eleventh Circuit's position in *In re Al Zawawi*. In doing so, the court denied recognition of both a Hong Kong corporate liquidation and an individual bankruptcy.

The decision could be persuasive in future filings, and it will be worth monitoring if the *Siu-Fung Ceramics* case proceeds on appeal.

This article explores the case background and highlights key takeaways for businesses.

BACKGROUND

The Siu-Fung Group entered liquidation proceedings before the Hong Kong High Court in 2000. The group's chairman, Siu-Fung Siegfried Lee, was declared personally bankrupt in Hong Kong in 2001 and received a discharge in 2005, although his bankruptcy case was never closed.

The foreign representatives (i.e., the group's joint liquidators and Lee's bankruptcy trustees) alleged that Lee orchestrated a decades-long effort to strip assets from the group and his personal estate through a series of transfers involving family members and a network of British Virgin Islands and Cayman Islands entities. The assets were allegedly transferred to Roy USA, Inc. and various Texas real estate projects. Lee moved to the U.S. in 2016 on an L-1A visa and has lived in California and Texas since then.

* The authors, attorneys with DLA Piper, may be contacted at craig.martin@us.dlapiper.com and erik.stier@us.dlapiper.com, respectively.

In July 2024, the foreign representatives filed a Chapter 15 petition in the Southern District of Texas seeking recognition of both the Siu-Fung Group liquidation and the Lee bankruptcy.

APPLICATION TO CHAPTER 15 RECOGNITION

Judge Alfredo R. Pérez first addressed whether the Bankruptcy Code's requirement that a debtor must have "a domicile, a place of business, or property in the United States" applies as a condition to Chapter 15 recognition. This issue has divided circuits.

The court held that Section 109(a) – which specifies who may be a debtor under the Bankruptcy Code – applies to Chapter 15. The court's reasoning tracked the Second Circuit's analysis in *In re Barnett*. Specifically, the court concluded that, under a different section of the Bankruptcy Code, all provisions in Chapter 1, including Section 109(a), apply to Chapter 15.

The court rejected the foreign representatives' reliance on the Eleventh Circuit's *Al Zawawi* decision, noting that the *Al Zawawi* majority expressly agreed with *Barnett's* analysis and reached its contrary holding only because of binding Eleventh Circuit precedent in *In re Goerg*.¹ The court also noted that Judge Barbara Lagoa's concurrence in *Al Zawawi* demonstrated that Section 1502(1) – which contains a separate definition of "debtor" – and Section 109(a)'s definition are reconcilable, not conflicting.

The court further rejected the argument that applying Section 109(a) would undermine Chapter 15's objectives. Citing recent authority from the Southern District of New York, Judge Pérez observed that courts have routinely found that a pre-petition retainer deposited into a U.S. bank account is sufficient to satisfy the property requirement under the Bankruptcy Code. The court noted that establishing a low barrier to debtor eligibility furthers Chapter 15's goals of cross-border cooperation and fair and efficient administration.

RECOGNITION DENIED UNDER SECTION 109(a) AND SECTION 1517

Siu-Fung Group

Although the court found that all Chapter 15 requirements for recognition were met, the foreign representatives failed to qualify as debtors due to a lack of a domicile, a place of business, or property in the U.S. The foreign representatives offered two theories of U.S. property, both of which the court rejected.

¹ *In re Goerg*, 844 F.2d 1562 (11th Cir. 1988).

First, the court held that a USD1,200 retainer deposited with U.S. counsel nine months after the petition date could not satisfy the property requirement because the statute uses the present tense (“has . . . property”). A retainer provided after the petition date could not establish eligibility as of the petition date.

Second, the court held that the foreign representatives’ potential fraudulent transfer claims did not constitute property in the U.S. for purposes of the property requirement. The court distinguished *Octaviar II*, where the foreign representatives had already filed lawsuits before seeking recognition, and *Al Zawawi* – where the transferred assets were U.S. assets on the petition date.

Specifically, the court noted that:

- (1) the allegedly transferred assets originated in Hong Kong and the People’s Republic of China;
- (2) the transfer occurred 25 years ago; and
- (3) no U.S. lawsuit had been filed.

Lee’s 2001 Bankruptcy

The Bankruptcy Code’s property requirement was not at issue for Lee’s personal bankruptcy, as he had property in the U.S. However, the Bankruptcy Court determined that the foreign representatives failed to demonstrate that Lee’s 2001 bankruptcy proceeding in Hong Kong was a foreign main or non-main proceeding.

The court found that Lee’s nine years of continuous physical presence, tax filings, employment, and temporary L-1A visa status established that Lee’s center of main interests (COMI) on the petition date was the U.S., not Hong Kong. Accordingly, the Hong Kong bankruptcy was not a foreign main proceeding.

The foreign representatives also argued that Lee had an “establishment” in Hong Kong, so the bankruptcy qualified as a foreign non-main proceeding. They noted that Lee served as chairman and director of Lion Legend, a Cayman Islands company with a Hong Kong office. While Lion Legend had substantial Hong Kong operations from 2017 to 2021, the foreign representatives presented no evidence of any activity in Hong Kong after 2022. Similarly, the foreign representatives failed to show that Lee acted as chairman and director of Lion Legend after 2022. The court declined to infer Lee’s connection with Lion Legend or its business activities in Hong Kong on the petition date and held that no “establishment” had been conclusively proven.

PRACTICAL IMPLICATIONS

The Circuit Split Deepens, With Additional Support for *Barnet*

With the Southern District of Texas now applying Section 109(a) to Chapter 15, practitioners in the Fifth Circuit's major bankruptcy venues should consider debtor eligibility as a pre-condition to recognition. The Second Circuit remains the only circuit with a binding appellate holding on point. However, this opinion could strengthen the *Barnet* position nationally, despite a contrary opinion from the Delaware Bankruptcy Court and the Eleventh Circuit's *Al Zawawi* decision, which many view as opposing *Barnet*.

Timing Matters for the Retainer

The court confirmed that a retainer deposited with U.S. counsel satisfies the Bankruptcy Code's property requirement, but it must be deposited before the petition is filed, as eligibility is determined on the petition date.

Potential Claims Face a High Bar

Courts may accept unfiled causes of action as "property" that would satisfy the property requirement, but only when the underlying facts are sufficiently concrete. Unfiled claims where factual predicates remain disputed may not suffice.

Individual Debtors Present COMI Challenges

The court's COMI and establishment analyses underscore the challenges of proving an individual's COMI other than where the individual resides, even when they are on a temporary visa. The decision also raises questions about what an individual may need to prove an "establishment" – meaning non-transitory economic activity – in a foreign jurisdiction to support recognition of a foreign proceeding as a foreign non-main proceeding.