

# Client Alert

Financial Restructuring Practice Group & International Arbitration Litigation Practice Group

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## OAS UPDATE: Bankruptcy Court Grants Limited Temporary Relief in Chapter 15 Case

**Background:** Grupo OAS, a Brazilian construction conglomerate linked to a massive corruption scandal (“OAS”), filed for Chapter 15 creditor protection in the Bankruptcy Court for the Southern District of New York on April 15, 2015, two weeks after entering bankruptcy in Brazil. If “recognized” by Bankruptcy Judge Stuart Bernstein, the Chapter 15 petition would, among other things, essentially bind OAS creditors in the United States to the restructuring terms approved by the Brazilian court overseeing OAS’s reorganization. OAS has approximately \$3 billion in liabilities (mostly unsecured debt).

**Legal Principles:** When a petition for recognition of a foreign proceeding is filed under Chapter 15, actions against the debtor are not automatically stayed as they are under other chapters of the Bankruptcy Code. During this “gap period”—the time between the petition date and the recognition date—the foreign representative of the Chapter 15 debtor may seek provisional relief pursuant to section 1519 of the Bankruptcy Code. Under this section, a court may grant temporary relief during the gap period if it is “urgently needed to protect the assets of the debtor or the interests of creditors”; such relief may include an automatic stay with respect to the debtor’s assets located in the United States.

**The Need For Temporary Relief:** Upon filing its petition, OAS moved for provisional relief, seeking imposition of the automatic stay until the Court ruled on its recognition petition. Absent such relief, OAS asserted that pending creditor actions would disrupt the restructuring proceedings in Brazil. OAS pointed to the fact that hedge funds led by Aurelius Capital Management already had seized approximately \$5.6 million in OAS’s assets in the United States, and there were pending actions seeking to seize additional OAS assets.

Aurelius, who had sued OAS in New York State Supreme Court (“**New York Action**”) before the Chapter 15 for breach of its debt instrument, objected to the Motion arguing that the Chapter 15 proceeding was part of OAS’s scheme to defraud bondholders. A hearing was held on April 17, 2015 to consider the Motion.

**Court Decision:** In its April 30, 2015 Order, the Bankruptcy Court concluded that the foreign representative demonstrated a likelihood of success that its

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Chapter 15 Petition would be recognized thus justifying granting provisional relief under section 1519. Generally, creditors of OAS were temporarily restrained from further execution against attachment or seizure of any property of OAS located in the United States. The one exception was that the Court refused to prohibit the state court in the New York Action from hearing and deciding the pending motion to confirm an order of attachment. But the plaintiffs in the New York Action were temporarily enjoined from exercising remedies on the order of attachment, if obtained, essentially until the Bankruptcy Court could determine whether the recognition petition would be granted. If granted, the recognition petition would stay the plaintiffs from further creditor actions.

**Analysis:** OAS is a good example of how the Chapter 15 process can be used (a) to protect U.S. based assets of an entity in a foreign proceeding, (b) obtain a stay from U.S. based litigation against an entity in a foreign proceeding, and (c) to bind U.S. creditors to the terms of the foreign proceeding. The May hearing on OAS's recognition petition should shed further light on these principles and objectives.

If you have further questions about OAS or Chapter 15 proceedings in general, please contact Arthur Steinberg or Harry Burnett.

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