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Solely in His Capacity as Insolvency Trustee of
Oi Brasil Holdings Coöperatief U.A.*

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

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In re: :
: Chapter 15
Oi Brasil Holdings Coöperatief U.A., :
: Case No. 17-11888 (SHL)
Debtor in a Foreign Proceeding. :
:
-----X

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In re: :
: Chapter 15
Oi Brasil Holdings Coöperatief U.A., :
: Case No. 16-11794 (SHL)
Debtor in a Foreign Proceeding. :
:
-----X

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-----X
In re: :
: Chapter 15
OI S.A., et al.,¹ :
: Case No. 16-11791 (SHL)
Debtors in a Foreign Proceeding. :
: (Jointly Administered)
-----X

¹ The debtors in the chapter 15 cases that currently are jointly administered and the four identifying digits of the tax number of each are: Oi S.A. (5.764); Telemar Norte Leste S.A. (0.118); Oi Brasil Holdings Coöperatief U.A. (8518); and Oi Móvel S.A. (3.963).

**DECLARATION OF JASPER R. BERKENBOSCH IN SUPPORT
OF VERIFIED PETITION AND MOTION FOR RELATED RELIEF**

TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

Jasper R. Berkenbosch, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the laws of the United States of America as follows:

1. I hereby submit this declaration (the "Declaration"), made in my capacity as the duly appointed trustee (*curator*) (the "Insolvency Trustee") of Oi Brasil Holdings Coöperatief U.A. ("Coop") in its bankruptcy proceeding, Case No. F.13/17/163 (the "Dutch Bankruptcy Proceeding") pending before the District Court of Amsterdam (the "Dutch Court") pursuant to the Dutch Insolvency Act (*Faillissementswet*) (the "Dutch Insolvency Act"), in support of: (a) the voluntary petition [ECF No. 1] (the "Voluntary Petition"), and (b) the *Verified Petition and Motion for an Order (i) Recognizing the Dutch Bankruptcy Proceeding as the Foreign Main Proceeding for Oi Brasil Holdings Coöperatief U.A.; (ii) Recognizing the Foreign Representative; (iii) Modifying the Prior Recognition Order; (iv) Modifying the Prior Joint Administration Order and (v) Granting Certain Related Relief* (the "Verified Petition and Motion").

2. Except as otherwise indicated, all statements set forth herein are based upon: (a) my personal knowledge of the Coop estate acquired in my capacity as the silent administrator of Coop, the duly appointed administrator (the "SoP Administrator") of Coop in its suspension of payments proceeding before the Dutch Court (the "Suspension of Payments Proceeding") and the Insolvency Trustee; (b) my discussions with members of the board of directors of Coop (the "Coop Board"), employees and executives of Oi S.A. and each of their professional advisors; (c) my review of relevant documents; and/or (d) my opinion based upon

my experience. If called to testify, I could and would testify competently to each of the facts set forth herein.

Personal Background and Qualifications

3. I am a partner with Jones Day in Amsterdam, the Netherlands. I have 18 years of experience in the area of insolvency law, and have acted for banks, creditors and companies in distress. I am regularly appointed in the Netherlands as an administrator in suspension of payment proceedings and as a trustee in bankruptcy proceedings under Dutch law. I obtained an Economic Civil Law Degree from Utrecht University in 1997, a European Law Degree from Cambridge University, St. John's College in 1997, an Insolvency Law Degree from Grotius Academy in 2003 and a Financial Economy for Administrators Degree from Erasmus University in 2006.

4. As described in greater detail below, on April 19, 2017 (the "Conversion Date"), the Amsterdam Court of Appeals (the "Dutch Court of Appeals") declared Coop bankrupt and appointed me as the Insolvency Trustee of Coop in the Dutch Bankruptcy Proceeding.² By the same order, the Dutch Court of Appeals also appointed Mr. W.F. Korthals-Altes, a sitting judge of the Dutch Court, as the supervisory judge in the Dutch Bankruptcy Proceeding (the "Dutch Supervisory Judge"). Upon my appointment as the Insolvency Trustee, I obtained sole and exclusive control over Coop's estate (i.e., all of Coop's property, assets and liabilities worldwide) pursuant to Dutch law. On July 7, 2017, the determination of the Dutch

² See Gerechtsh of Amsterdam, 19 April 2017, ECLI:NL:GHAMS:2017:1325, a certified copy of which (with an English translation) is included with the Voluntary Petition and attached as Exhibit B hereto (the "Dutch Court of Appeals Decision").

Court of Appeals appointing me as the Insolvency Trustee was confirmed by the Supreme Court of the Netherlands (the "Dutch Supreme Court").³

5. On July 5, 2017, the Dutch Supervisory Judge granted me authority to act as the global foreign representative of Coop and to commence this proceeding (the "Dutch SJ Chapter 15 Decision").

6. Prior to my appointment as the Insolvency Trustee of Coop, I served as the SoP Administrator in Coop's Suspension of Payments Proceeding that was voluntarily commenced by Coop at the direction of the Coop Board and its sole member, Oi S.A., on August 9, 2016. The Suspension of Payments Proceeding was commenced shortly after Coop, along with Oi S.A. and certain of its other affiliates (the "Brazilian RJ Debtors"), commenced a judicial reorganization proceeding (the "Brazilian RJ Proceeding") in the *7a Vara Empresarial do Rio de Janeiro* (Seventh Business Court of Rio de Janeiro) (the "Brazilian RJ Court") on June 20, 2016.

7. A timeline of the events described herein is attached hereto as Exhibit A. A copy of the Dutch SJ Chapter 15 Decision is attached hereto as Exhibit C. A copy of the Dutch Supervisory Judge's decision granting me authority to appeal the Brazilian Injunction (as defined below) (the "Dutch SJ Injunction Decision") is attached hereto as Exhibit D. The minutes of the Coop Board meeting approving the commencement of the Brazilian RJ Proceeding are attached hereto as Exhibit E. A certified copy (with an English translation) of the request for granting Suspension of Payments Proceeding and submission of draft composition plan (the "SoP Petition") is attached hereto as Exhibit F. A certified copy (with an English translation) of the decision commencing the Suspension of Payments Proceeding (the "SoP

³ As described in greater detail in footnote 58 below, the Dutch Supreme Court Decision (as defined below) will be filed with this Court when the official English translation of that decision becomes available.

Commencement Order") is attached as Exhibit G. A certified copy (with an English translation) of the Dutch Court's ruling on the conversion request (the "Dutch Court Conversion Decision") is attached hereto as Exhibit H. The letter from Jasper Berkenbosch, as SoP Administrator, to the Coop Board, dated March 2, 2017, is attached hereto as Exhibit I. The letter from Jasper Berkenbosch, as Insolvency Trustee, to the Coop Board, dated April 20, 2017, is attached hereto as Exhibit J. The letter from the Dutch Supervisory Judge to Judge Fernando C.F. Viana, dated May 9, 2017, is attached hereto as Exhibit K. The Brazilian Injunction (as defined below) is attached hereto as Exhibit L. The Decision of the Court of Justice of the State of Rio De Janeiro, Eighth Civil Court, Interlocutory Appeal No. 0030269-27.2017.8.19.0000, dated June 13, 2017, is attached hereto as Exhibit M. The Decision of the Court of Justice of the State of Rio De Janeiro, Eighth Civil Court, Motions for Clarification, Interlocutory Appeal No. 0030269-27.2017.8.19.0000, dated July [sic] 29, 2017, is attached hereto as Exhibit N.

Background

A. Oi S.A. and Coop

1. Oi S.A.

8. Oi S.A. and its affiliates operate a large global telecommunications service.

Oi S.A. is the parent company at the top of a corporate structure, which includes Coop and its Dutch affiliate, Portugal Telecom International Finance B.V. ("PTIF"), and generally consists of two lines of business in Brazil: (a) a cellular telecommunications business owned and operated principally through Oi Móvel S.A. ("Oi Móvel"), and (b) legacy landline-related, concession based telecommunications business owned and operated principally by Oi S.A., Telemar Norte Leste S.A. ("Telemar") and certain other Brazilian affiliates. Although the landline business and portions of the cellular business are located in Brazil, the telecommunications business requires a global network facilitated by, among other things, various roaming and similar contractual

arrangements with other global telecommunications companies outside of Brazil.

9. In the recent past, Oi S.A. and its affiliates have attempted to expand internationally, including through the acquisition of telecommunications businesses in Portugal (including PTIF), a member of the European Union ("EU"), and certain African countries. Although Oi S.A. and its affiliates have since exited the EU, the Portuguese business was sold for proceeds equal to an amount sufficient to cover outstanding PTIF Notes (as defined below). Those proceeds were loaned to Coop and held in various Coop bank accounts, until billions of Euros were transferred from Coop to Brazil in the weeks and months before the commencement of the Brazilian RJ Proceeding.

2. Coop

10. Coop has no operations in Brazil. Coop was incorporated on April 20, 2011 as a Dutch cooperative with excluded liability (*coöperatie met uitgesloten aansprakelijkheid*). Coop maintains its registered office at Strawinskylaan 3127, 1077 ZX, Amsterdam, Netherlands. Until April 19, 2017 — the day the Dutch Court of Appeals declared Coop bankrupt,⁴ Coop was governed by two directors, one of whom has always resided in the Netherlands, as required under Dutch law to maintain its status as a Dutch corporate entity.

11. The Coop Board holds its meetings in the Netherlands as required under Dutch law. Coop files tax returns with the Dutch tax authorities, files financial statements with the Dutch Chamber of Commerce and complies with other requirements of maintaining its corporate existence in the Netherlands, all as required under Dutch law. In addition, Coop's books and records were, and continue to be, located in the Netherlands, Coop has retained

⁴ See Ex. B.

professionals in the Netherlands and, until approximately May 1, 2017, Coop maintained at least one employee in the Netherlands.

12. Coop maintains bank accounts and retains cash in the Netherlands. Since the commencement of the Suspension of Payments Proceeding, substantially all of Coop's cash is held in accounts located in the Netherlands.

3. Coop's Assets and Liabilities

13. As of the commencement of the Suspension of Payments Proceeding, Coop's debts totaled approximately EUR 5.7 billion, consisting principally of approximately EUR 1.9 billion outstanding under the Coop NY Notes (as defined below) and approximately EUR 3.8 billion owed to PTIF under the PTIF Loan Agreement (as defined below). In addition, Coop owes approximately EUR 50,000 to other creditors, all of whom are service providers located in the Netherlands.

a. Coop's Liabilities

(1) The Coop NY Notes

14. In 2012 and 2015, Coop issued two series of notes — EUR 628,112,000 of 5.625% U.S. Notes due 2021 (the "2021 U.S. Notes") and \$1,451,413,000 of 5.75% U.S. Notes due 2022 (the "2022 U.S. Notes" and, together with the 2021 U.S. Notes, the "Coop NY Notes").⁵ Coop, as the issuer of the Coop NY Notes, is primarily responsible for their repayment. The Coop NY Notes are guaranteed by Oi S.A.

⁵ The 2022 U.S. Notes are governed by an indenture agreement dated February 10, 2012 and a first supplemental indenture dated July 27, 2012 (together, the "2022 Notes Indenture"); and (b) the 2021 U.S. Notes are governed by an indenture agreement dated June 22, 2015 (the "2021 Notes Indenture" and, together with the 2022 Notes Indenture, the "Coop NY Notes Indentures"). The 2022 U.S. Notes were originally issued in 2012 by Oi S.A., but Coop was substituted as issuer later that year.

15. The Coop NY Notes Indentures are governed by New York law, with the Bank of New York Mellon ("BONY") acting as the indenture trustee (the "Indenture Trustee") for both series of Coop NY Notes. The Coop NY Notes Indentures designate New York as the forum for any disputes and require that Coop maintain an office or agency in New York City for the purpose of service of process. The holders of Coop NY Notes (the "Coop NY Noteholders") appear to generally consist of professional and retail investors located in the United States and the EU.

16. In addition, provisions in the Coop NY Notes Indentures require the performance of various actions by the Indenture Trustee in New York, including, without limitation: (a) the authentication and delivery of the Coop NY Notes; (b) the maintenance of a registry of Coop NY Noteholders and the authentication and delivery of Coop NY Notes to transferees; (c) the cancellation and disposal of surrendered Coop NY Notes; (d) the receipt of the amount payable by Coop upon a redemption of Coop NY Notes; (e) the recognition and acknowledgement of certain events of default and the pursuit of certain remedies related thereto; (f) the discharge of the Coop NY Notes and defeasance of certain covenants and the receipt of cash or securities posted in connection with such defeasance; and (g) the execution of amendments to the Coop NY Notes Indentures.⁶

⁶ See 2022 Notes Indenture §§ 2.02, 2.05, 2.06, 2.10, 3.04, 7.05, 9.05 and Arts. 6, 8; 2021 Notes Indenture §§ 2.02, 2.05, 2.06, 2.10, 3.04, 7.05, 9.05 and Arts. 6, 8.

(2) The PTIF Loan Agreement and
the Transfer of Funds from PTIF to Coop

17. Coop is also obligated to repay funds received from Coop's sister Dutch company, PTIF.

18. PTIF was incorporated on November 26, 1998 as part of the Portugal Telecom, SGPS, S.A. group of companies ("Portugal Telecom"). In April of 2014, PTIF, along with Portugal Telecom, was acquired by Oi S.A. Less than a year later, on December 9, 2014, Oi S.A. agreed to sell Portugal Telecom (the "PTIF Sale"). As part of the PTIF Sale, Oi S.A. retained PTIF and approximately EUR 3.9 billion of PTIF's outstanding bond debt (the "PTIF Notes"), which had been issued between 2005 and 2013. In exchange, the buyer of Portugal Telecom agreed to transfer the value of the PTIF Notes to PTIF in cash.

19. When the PTIF Sale closed on June 2, 2015, PTIF transferred approximately EUR 4,648,887,000 to Coop (the "PTIF Loan") pursuant to a loan agreement between PTIF and Coop also dated June 2, 2015 (the "PTIF Loan Agreement"). As such, the majority of Coop's cash originated from the proceeds of the sale of a European business. While the PTIF Loan Agreement is governed by and construed in accordance with the laws of Brazil, it also designates the courts of the Netherlands as the exclusive jurisdiction to settle any matters arising out of the PTIF Loan Agreement.⁷

b. Coop's Assets

(1) Coop's Tangible Assets

20. Coop's tangible assets, as far as I am aware, consist of cash in the following locations: (a) a bank account in the Netherlands with ABN AMRO Bank N.V. ("ABN"), from which the costs of the Suspension of Payments Proceeding were paid, and the

⁷ PTIF Loan Agreement §§ 6.5 & 8.1.

court-controlled bankruptcy account with KAS Bank N.V., to which the balance of the ABN account was transferred on the Conversion Date, with a current total balance of approximately EUR 416,905; (b) a bank account at Citibank (New York) with approximately USD 10,000 held in trust by White & Case LLP ("White & Case");⁸ and (c) a bank account at Citibank (New York) with approximately USD 50,000 held in trust by Jones Day.

(2) Coop's Intangible Assets

21. Coop's intangible assets, as far as I am aware, include, among other things, (a) claims against Oi S.A. and Oi Móvel arising under the Coop Loan Agreements (as defined below) (the "Coop Loan Claims"), (b) claims and causes of action that arise under Dutch law (and potentially other jurisdictions as well) against various parties, including Oi S.A., Oi Móvel and the members of the Coop Board (the "Potential Causes of Action"), and (c) a claim against the Dutch tax authorities for a VAT refund of approximately EUR 160,846 (the "Tax Claim").

i. The Coop Loan Claims

22. As described in greater detail below, the Coop Loan Claims consist of Coop's claims against Oi S.A. for repayment of loans of approximately EUR 4.0 billion and against Oi Móvel for repayment of loans of approximately EUR 1.6 billion.

23. Although the Brazilian Verified Petition (as defined herein) placed significant emphasis on the Coop Loan Claims as a basis for establishing Coop's COMI in Brazil,⁹ under the proposed composition plan presented by the Brazilian RJ Debtors in the

⁸ White & Case currently represents Oi S.A. and Oi Móvel, both of which are defendants in the *actio Pauliana* initiated by Coop (as described in more detail below) and the Oi Foreign Representative, and has represented Coop (among other Oi S.A. affiliates). The Insolvency Trustee reserves all rights with respect to White & Case's representation of the foregoing parties.

⁹ See Verified Petition for Recognition of the Brazilian RJ Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520 dated June 21, 2017, No. 16-11791 [ECF No. 3] (the "Brazilian Verified Petition"), ¶ 29 ("As Coop owns no other property, all its substantial assets—namely, intercompany receivables against Brazilian entities—are presently located in Brazil.").

Brazilian RJ Proceeding (the "Brazilian RJ Plan"), Coop purports to renounce its right to receive any recovery on account of these claims. The actual value of the Coop Loan Claims (and the compensation that should be offered to Coop's creditors) cannot be determined without disclosure of individualized creditor lists for each of the Brazilian RJ Debtors — information that Oi S.A. has failed to release publicly or provide to me despite repeated requests.

ii. The Potential Claims and Causes of Action

24. The transfers made pursuant to the Coop Loan Agreements (as defined below) shortly before commencement of Oi S.A. and Oi Móvel's restructuring proceedings give rise to what are potentially Coop's most significant assets — the Potential Causes of Action. These Potential Causes of Action include, among others, pauliana actions (similar to fraudulent transfer causes of action under U.S. law),¹⁰ actions arising from wrongful / unlawful acts,¹¹ breaches of fiduciary duty by the Coop Board¹² and actions arising from the potential personal liability of the members of the Coop Board.¹³ Some or all of these Potential Causes of Action are to be pursued in the Netherlands (where the harm occurred) and involve claims with a face value of billions of Euros.¹⁴

25. On May 30, 2017, I commenced the first proceeding related to the Potential Causes of Action by instituting an *actio Pauliana* in the Netherlands with the purpose

¹⁰ Dutch Insolvency Act §§ 42-47.

¹¹ Dutch Civil Code § 6:162.

¹² Id. § 2:9.

¹³ Id. §§ 2:248, 2:50a, 2:53a & 6:162.

¹⁴ Coop may have similar or additional Potential Causes of Action arising under the laws of the United States, Brazil and potentially other jurisdictions as well. I continue to evaluate Coop's possible claims and causes of action and the best forum in which to pursue them. Nothing herein should, or should be deemed to, prejudice my right to pursue any and all causes of action in any and all relevant jurisdictions.

of unwinding the 2016 loans from Coop to Oi Móvel.¹⁵ The International Bondholder Committee and the PTIF Insolvency Trustee (each as defined below) have expressed support for my prosecution of the Potential Causes of Action in the Netherlands and my efforts to restore the value of the Coop estate.

iii. The Tax Claim

26. Coop has a claim against the Dutch tax authorities for a VAT refund of approximately EUR 160,846. The Dutch VAT or "value added tax" is a sales tax charged on the provision of goods and services in the Netherlands. The Insolvency Trustee is currently pursuing this claim on behalf of Coop against the Dutch tax authorities.

B. Events Leading to Coop's Insolvency Proceedings

1. *Oi S.A.'s Financial Distress*

27. In late 2015, Oi S.A. and its affiliates began experiencing financial distress, which Oi S.A. has attributed to chilled foreign investment in Brazil, rising interest rates, rapidly declining demand for fixed-line services (the primary operational focus of Oi S.A. and some of its affiliates) and increasingly burdensome regulatory requirements.

28. In 2016, Oi S.A.'s financial distress increased significantly. Its operational losses for the period from January 2016 to June 2016 were 168% higher than the losses for the same period in 2015, and its total loss for this period in 2016 increased by 1126% relative to 2015. Similarly, Oi S.A.'s stock price declined dramatically leading up to the commencement of the Brazilian RJ Proceeding in June, 2016. Between January 2014 and August 9, 2015 (one year prior to the commencement of Coop's Suspension of Payments Proceeding), the market price for Oi S.A.'s common stock had already declined by approximately 90 percent.

¹⁵ See *Writ of Summons and Interim Application for an Order Granting Provisional Relief*, C/13/630582 / HA ZA 17-612.

29. Credit rating agencies took note and began gradually downgrading the financial ratings of Oi S.A. and its affiliates. In late 2015 and 2016, the credit rating agencies continued warning creditors of a high risk of impending debt restructuring initiatives resulting in potential losses to creditors.

2. *The Coop Loan Agreements and Transfers of Cash From Coop (the Netherlands) to Oi S.A. and Oi Móvel (Brazil)*

30. Since its formation, Coop has entered into the following four loan agreements with Oi S.A. and Oi Móvel (the "Coop Loan Agreements):

Loan	Borrower	Agreement/ Amendment Date	Face Amount (EUR)	Maturity Date
"Loan 1"	Oi S.A.	August 29, 2012	1,500,000,000	February 7, 2022
"Loan 2"	Oi S.A.	June 18, 2015	400,000,000	June 18, 2016
		June 26, 2015	2,000,000,000	June 18, 2016
		January 25, 2016	2,647,563,264	June 18, 2016
		March 17, 2016	2,577,253,888	EUR 1,633,305,131 due June 13, 2025; EUR 943,948,757 due June 18, 2016 with an option to extend to May 5, 2020
"Loan 3"	Oi S.A.	February 24, 2016	245,248,715	June 20, 2021
		March 17, 2016	245,248,715	June 20, 2021
"Loan 4"	Oi Móvel	March 3, 2016	1,560,000,000	June 20, 2021

31. As the financial condition of Oi S.A. continued its deterioration after the PTIF Sale, in 2015 and 2016, Coop and Oi S.A. executed Loans 2, 3 and 4, and Coop transferred cash from the Netherlands to Brazil. In the year preceding the commencement of the Brazilian RJ Proceeding, a total of approximately EUR 4,448,736,523 was transferred from Coop to Oi

S.A. and Oi Móvel pursuant to Loans 2, 3 and 4.¹⁶ The transfers of cash took place on the following dates:

Loan	Disbursement Date	Borrower	Amount (EUR)
2	June 22, 2015	Oi S.A.	225,000,000.00
2	June 22, 2015	Oi S.A.	163,948,756.78
2	June 23, 2015	Oi S.A.	142,000,000.00
2	June 30, 2015	Oi S.A.	50,000,000.00
2	July 10, 2015	Oi S.A.	40,000,000.00
2	August 5, 2015	Oi S.A.	175,000,000.00
2	September 24, 2015	Oi S.A.	145,000,000.00
2	September 25, 2015	Oi S.A.	200,000,000.00
2	September 28, 2015	Oi S.A.	374,247,541.58
2	September 29, 2015	Oi S.A.	12,286,525.69
2	October 2, 2015	Oi S.A.	3,882,376.03
2	November 17, 2015	Oi S.A.	6,000,000.00
2	November 18, 2015	Oi S.A.	2,521,497.28
2	December 11, 2015	Oi S.A.	31,000,000.00
2	January 19, 2016	Oi S.A.	245,000,000.00
2	January 21, 2016	Oi S.A.	100,000,000.00
2	January 22, 2016	Oi S.A.	155,000,000.00
2	January 28, 2016	Oi S.A.	647,563,264.00
3	February 25, 2016	Oi S.A.	141,121,353.00
4	March 3, 2016	Oi Móvel	1,515,000,000.00

¹⁶ It does not appear that any cash was transferred from Coop to Oi S.A. pursuant to Loan 1 in the year preceding the commencement of the Brazilian RJ Proceeding.

Loan	Disbursement Date	Borrower	Amount (EUR)
4	March 7, 2016	Oi Móvel	37,000,000.00
2	April 30, 2016	Oi S.A.	37,165,208.45

32. While Oi S.A. has repaid a portion of the outstanding amounts (approximately EUR 268,331,496), as of the date of commencement of the Suspension of Payments Proceeding, the aggregate principal amount outstanding under the Coop Loan Agreements totaled approximately EUR 5,518,656,925.

3. *Changes to Coop's Board and Amendments to the Coop Loan Agreements and PTIF Loan Agreement*

33. Prior to the last round of cash transfers from Coop to Oi S.A. and Oi Móvel in Brazil, and while facing increased pressure from creditors (described in greater detail below), Trust International Management (T.I.M.) B.V. — a Dutch entity that was serving as one member of the two-member Coop Board — was replaced on March 3, 2016 by Mr. Lavatori Correa, an employee of Oi S.A., who Oi S.A. relocated from Brazil to the Netherlands for purposes of serving on the Coop Board.

34. Immediately following this change to the Coop Board, approximately EUR 1.6 billion was transferred from Coop to Oi Móvel pursuant to Loan 4. Days later, on March 9, 2016, Oi S.A. publicly announced that it had retained a financial advisor to assist in the restructuring of its indebtedness and negotiations with bondholders.

35. Shortly thereafter, on March 17, 2016, various amendments to one of the Coop Loan Agreements and to the PTIF Loan Agreement were made. Loan 3 was amended to change the governing law from Dutch to Brazilian law. By the same amendment, Loan 3 was modified to remove a clause that provided Coop with the right to request immediate payment of the outstanding debt under the agreement 181 calendar days after the date of disbursement.

Similarly, the maturity date of the PTIF Loan Agreement was extended from June 2, 2016 to various maturity dates depending on different tranches of borrowing ranging from July 24, 2016 to June 14, 2025.¹⁷

C. The Insolvency Proceedings

36. After several months of failed negotiations among Oi S.A. and its creditors, Oi S.A., Coop and the other Brazilian RJ Debtors commenced insolvency proceedings in Brazil, the United States and the Netherlands.

1. Brazil

a. *The Brazilian RJ Proceeding and Brazilian Chapter 15 Proceeding*

37. On June 20, 2016, Oi S.A., Coop, and the other Brazilian RJ Debtors — Oi Móvel, PTIF, Telemar, Copart 4 Participações S.A. and Copart 5 Participações S.A. — commenced the jointly administered Brazilian RJ Proceeding. Each of the Brazilian RJ Debtors required the approval of their respective board of directors or similar governing body to commence the Brazilian RJ Proceeding. With respect to Coop, the minutes of the meeting at which the Coop Board approved the commencement of the Brazilian RJ Proceeding included a justification for the filing that the claims of Coop against Oi S.A. and Oi Móvel would be respected and recognized in the Brazilian RJ Proceeding.¹⁸

¹⁷ PTIF Loan Agreement, Annex A. This amendment effectively mooted an action instituted by a creditor of Coop and PTIF seeking to enjoin Coop from transferring its remaining available cash to Oi S.A. or its affiliates. In that action, the Dutch Court declined to grant the creditor the requested relief because Coop was not yet in default under its obligations to PTIF (in part because the maturity date under the PTIF Loan Agreement was extended).

¹⁸ See Ex. E (stating that Coop "will be accepted as a creditor of Oi and thus is not precluded by law from being able to receive consideration under the RJ Plan as any other creditor in the same class as [Coop].").

38. One day later, on June 21, 2016, Mr. Ojas N. Shah (the "Oi Foreign Representative"),¹⁹ in his capacity as the purported foreign representative of Oi S.A., Coop, Oi Móvel and Telemar (collectively, the "Original Chapter 15 Debtors"), commenced the jointly administered chapter 15 cases that are currently pending before this Court (the "Brazilian Chapter 15 Proceeding") and sought this Court's recognition of the Brazilian RJ Proceeding as the "foreign main proceeding" pursuant to chapter 15 of the Bankruptcy Code for each of the Original Chapter 15 Debtors.²⁰ However, apparently conscious of the tenuous nature of this request, the Brazilian Chapter 15 Petition and Brazilian Verified Petition filed in support thereof requested in the alternative that this Court recognize the Brazilian RJ Proceeding as a foreign nonmain proceeding for Coop.²¹

39. On June 29, 2016, the Brazilian RJ Court entered an order opening the Brazilian RJ Proceeding. On July 22, 2016, this Court, based on the facts presented by Oi S.A. in the Brazilian Verified Petition and related pleadings, entered the *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief, In re OI S.A.*, No. 16-11791 [ECF No. 38] (Bankr. S.D.N.Y. July 22, 2016) (the "Prior Recognition Order"), which, among other things, recognized (a) the Brazilian RJ Proceeding as a foreign main proceeding for Coop pursuant to section 1517 of the Bankruptcy Code and (b) the Oi Foreign Representative as a

¹⁹ According to filings made with this Court, the Oi Foreign Representative was appointed as the purported foreign representative "pursuant to resolutions and powers of attorney . . . signed by authorized representatives of each of the [Brazilian Chapter 15] Debtors" appointing him as the representative for each of the Brazilian Chapter 15 Debtors, including Coop). *Declaration of Ojas N. Shah in Support of the Verified Petition for Recognition of the Brazilian RJ Proceeding and Motion for Order Granting Related Relief Pursuant to 11 U.S.C. §§ 1515, 1517, and 1520 and Motion for Provisional Relief Pursuant to 11 U.S.C. §§ 1519, 1521(a)(7), and 362, In re OI S.A.*, No. 16-11791 (SHL) (Bankr. S.D.N.Y. June 21, 2016) [ECF No. 4], ¶ 6.

²⁰ See Brazilian Verified Petition.

²¹ See *id.* at 2 n.3, 30 n.51, 50 n.60; *Chapter 15 Petition for Recognition of a Foreign Proceeding, In re Oi Brasil Holdings Coöperatief U.A.*, No. 16-11794 (SHL) (Bankr. S.D.N.Y. June 21, 2016) [ECF No. 1] (the "Brazilian Chapter 15 Petition"), at p. 1.

foreign representative of Coop authorized to act on behalf of Coop in the Brazilian Chapter 15 Proceeding.²²

b. The Brazilian RJ Plan

40. On September 5, 2016, Oi S.A. submitted the Brazilian RJ Plan in the Brazilian RJ Proceeding on behalf of all of the Brazilian RJ Debtors, including Coop. Subsequently, on March 28, 2017, Oi S.A. announced that its board approved a number of amendments to the Brazilian RJ Plan, and that Oi S.A. would seek approval of the proposed amendments from the Brazilian RJ Court.²³ Marco Schroeder, the chief executive officer of Oi S.A., stated that the Brazilian RJ Plan, as amended, would be put to a vote.²⁴ All of the foregoing actions described in this paragraph were undertaken on behalf of Coop without my approval in my prior role as SoP Administrator, which approval was required by Dutch law.

41. The Brazilian RJ Plan treats all unsecured creditors of the Brazilian RJ Debtors as one single class receiving the same level of recovery. Coop NY Noteholders (who hold both a direct claim against Coop and a guarantee claim against Oi S.A.), will (a) receive no traceable recovery on account of their direct claim against Coop and (b) appear to have approximately 70-80% of the value of their guaranty claim eliminated, with the remaining approximately 20-30% exchanged for a convertible security instrument of unknown value and conditions. While Oi S.A. has asserted that the overall recovery for Coop NY Noteholders in the

²² Prior Recognition Order ¶¶ 2-3.

²³ See Notice to the Market: Approval of Basic Conditions for Adjustments to the Judicial Reorganization Plan (Mar. 22, 2017), http://ir.oi.com.br/oi2012/web/conteudo_en.asp?idioma=1&tipo=43101&conta=44&id=240126; see also Oi Submits Amended Judicial Recovery Plan to Rio Court, Information to Be Released "as Soon as Possible," ReorgResearch (Mar. 29, 2017), <http://platform.reorg-research.com/app#company/2452/intel/view/32790>.

²⁴ See Oi Executives Say That Despite Judicial Recovery, Business Is "As Usual," ReorgResearch (Mar. 23, 2017), <http://platform.reorg-research.com/app#company/2452/intel/view/32544> ("Schroeder said during the call. 'This is the proposal we'll send to the judge and put to a vote.'").

Brazilian RJ Plan takes into account both the direct claim and the guarantee, neither the Coop Board nor Oi S.A. have provided me with any financial analysis or data to verify this assertion. Also, the dilution to the recoveries of Coop's creditors is difficult to calculate independently because Oi S.A. has refused to disclose individualized creditor lists for each of the Brazilian RJ Debtors or respond to my other requests for information.

42. In addition, the Brazilian RJ Plan disregards the Coop Loan Claims — i.e., Coop's claims against Oi S.A. and Oi Móvel arising under the Coop Loan Agreements. This proposed treatment contradicts the statements regarding the recognition of the Coop Loan Claims recorded in the meeting minutes of the Coop Board in connection with it approving Coop's commencement of the Brazilian RJ Proceeding.²⁵

43. Finally, under the Brazilian RJ Plan, the existing shareholders of Oi S.A. appear to retain a significant portion of their equity interests even though the Brazilian RJ Plan proposes to pay creditors a mere 20-30% of their claims.²⁶

44. As described in greater detail below, the current timeline of the Brazilian RJ Proceeding appears to be moving towards approval of the Brazilian RJ Plan for the Brazilian RJ Debtors (including Coop).

²⁵ See supra footnote 18.

²⁶ The proposed revisions to the Brazilian RJ Plan announced by Oi S.A. on or about March 28, 2017 do not appear to address the flaws outlined above. See Oi Submits Amended Judicial Recovery Plan to Rio Court, Information to Be Released "as Soon as Possible," ReorgResearch (Mar. 29, 2017), <http://platform.reorg-research.com/app#company/2452/intel/view/32790>.

2. *The Netherlands*

a. *Involuntary Petitions and the Silent Administration Period*

45. On June 27, 2016 and July 8, 2016, certain Coop NY Noteholders filed involuntary bankruptcy petitions against Coop in the Netherlands seeking to force Coop's liquidation. Two additional involuntary bankruptcy petitions against Coop were subsequently filed in the Netherlands on July 11, 2016 and July 15, 2016, and all four were scheduled to be heard by the Dutch Court on August 9, 2016 (collectively, the "Involuntary Petitions").

46. Thereafter, on July 26, 2016, the Coop Board applied to the Dutch Court for the appointment of a silent administrator, as part of its preparation to commence a suspension of payments proceeding.²⁷ In response to the application, on July 28, 2016, the Dutch Court appointed me as the silent administrator. Under Dutch law, the period of silent administration is primarily used to prepare an entity for an insolvency proceeding and to gather information about the entity. In my capacity as the silent administrator, I used the period of silent administration to familiarize myself with Coop and the other Brazilian RJ Debtors by, among other methods, communicating with the Coop Board and its Dutch legal counsel.

b. *Coop Voluntarily Seeks Relief under a Suspension of Payments Proceeding and Establishes its COMI in the Netherlands*

47. On August 9, 2016, the Coop Board — supported by Coop's sole member, Oi S.A. — petitioned for a provisional suspension of payments proceeding by filing the SoP Petition with the Dutch Court. A suspension of payments proceeding is a formal insolvency

²⁷ While there are important differences, a Dutch suspension of payments proceeding is in some important respects similar to chapter 11 proceedings in the United States. In both, management retains significant control, the entity continues to operate, creditor actions are generally stayed and the entity is given an opportunity to reorganize and continue in operation. One important difference is that in a Dutch suspension of payments proceeding, management is prohibited from performing any acts of administration or disposal with regard to the estate without the administrator's consent. Dutch Insolvency Act §§ 214, 228 & 230. There is no doubt that the proposed renunciation of Coop's claims under the Brazilian RJ Plan is an act of administration or disposal of Coop's assets.

proceeding under the laws of the Netherlands and applies to all of Coop's assets and liabilities, wherever located. Coop's purpose in seeking a suspension of payments proceeding was to take advantage of the moratorium it would provide against certain actions against Coop in the Netherlands, including the Involuntary Petitions, as well as the ability to implement a restructuring plan for Coop.²⁸

48. In connection with the filing of its SoP Petition, Coop made certain representations to establish that its COMI was in the Netherlands. These representations were necessary for the Dutch Court to determine that it had jurisdiction to open the Suspension of Payments Proceeding, as required under applicable European Union ("EU") regulations.²⁹ EU regulations mandate that the "registered office shall be presumed to be the centre of [the company's] main interests in the absence of proof to the contrary."³⁰ Coop followed the presumption and did not put forth proof to the contrary. Specifically, in order to establish jurisdiction Coop asserted that (a) Coop's statutory seat was located in Amsterdam; (b) "one board member of [Coop] reside[d] in Amsterdam, the Netherlands and the other board member reside[d] in Brazil"; and (c) "the administration of [Coop was] kept in the Netherlands."³¹ This evidentiary presentation, aimed at establishing the gating items for a finding that Coop's COMI is

²⁸ See Ex. F §§ 5.7 & 6.1; see also *Third Declaration of Ojas N. Shah Notifying the Court of a Change of Status Pursuant to 11 U.S.C. § 1518 and 28 U.S.C. § 1746, In re OI, S.A.*, No. 16-11791 [ECF No. 48] (Bankr. S.D.N.Y. Aug. 23, 2017) (the "Shah Third Declaration") ¶ 6 ("[I]t would be 'highly detrimental' to Coop's creditors and those of the Oi Group generally if the Brazilian RJ Proceeding were disrupted by adverse actions against Coop in the Netherlands.").

²⁹ Dutch Insolvency Act § 214; Council Regulation 1346/2000/EC on Insolvency Proceedings, 2000 O.J. L 160/5 ("The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings.")

³⁰ Council Regulation 1346/2000/EC on Insolvency Proceedings, 2000 O.J. L 160/5. The model law on cross border insolvency mandates an identical presumption. Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") ("In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.").

³¹ Ex. F § 8.1.

in the Netherlands (a finding a Court went on to make and which Coop did not dispute), was submitted less than two months *after* Coop requested that its COMI should be found to be in Brazil in connection with the Brazilian RJ Proceeding and the Brazilian Chapter 15 Proceeding.³²

49. On August 9, 2016, the Dutch Court granted the SoP Petition. In doing so, the Dutch Court stated that it was "competent to open these main proceedings [referring to the Suspension of Payments Proceeding] as in its opinion *the centre of main interests of the debtor lies in the Netherlands.*"³³ The SoP Commencement Order was never contested and is now a final, irrevocable order. Although the Oi Foreign Representative informed this Court of the Suspension of Payments Proceeding and the SoP Commencement Order, *the Oi Foreign Representative did not disclose to this Court at any point Coop's representations with regard to the location of Coop's COMI, and the Dutch Court's finding that Coop's COMI is in the Netherlands.*³⁴

50. The SoP Petition included a draft "composition plan" that sets forth a plan of reorganization for Coop (the "Dutch Composition Plan"). The Dutch Composition Plan proposed to incorporate the recoveries offered to creditors under the Brazilian RJ Plan.³⁵

³² See generally Brazilian Verified Petition.

³³ Ex. G p. 1 (emphasis added).

³⁴ See e.g., Shah Third Declaration.

³⁵ Ex. F, § 6.2.

c. My Appointment as the SoP Administrator

51. In connection with granting the SoP Petition, the Dutch Court appointed me as the SoP Administrator. As SoP Administrator, I had a duty under Dutch law to safeguard the interests of Coop's creditors and take an active role in the custody of Coop's assets.³⁶ Among other things, I was responsible for supervising Coop's actions and taking appropriate measures if I deemed any act of Coop to be not in the best interest of its creditors.

52. As the SoP Administrator, I routinely communicated with various creditors and creditor groups on an informal basis. These creditors include, among others, (a) J.L.M. Groenewegen, in his capacity as the administrator for PTIF (in such capacity, the "PTIF Administrator"), and (b) the members of the steering committee (the "IBC Steering Committee") of the bondholder group comprised of holders of the Coop NY Notes and PTIF Notes (collectively, the "International Bondholder Committee"), as well as their advisors. Based on my independent diligence and review, I understand that the International Bondholder Committee holds substantial percentages of the outstanding amounts of the Coop NY Notes and PTIF Notes.

53. I also periodically published public notices to all creditors and submitted public reports regarding the status of Coop's insolvency proceedings as required under Dutch law. Over the course of the Suspension of Payments Proceeding, I provided six (6) formal notices to Coop's creditors and published two publicly available reports, all of which are available on a website I have maintained in my fiduciary capacity in connection with Coop's Dutch insolvency proceedings at <http://www.oibrasilholdingscoop-administration.com/>.

³⁶ Dutch Insolvency Act §§ 215 & 225.

54. Finally, I took action to clarify various misstatements made by the Oi Foreign Representative in filings submitted to this Court. For example, in the Shah Third Declaration, the Oi Foreign Representative created the impression that, if the Suspension of Payments Proceeding were converted to a Dutch insolvency proceeding, the conversion would automatically result in the liquidation of Coop.³⁷ After numerous creditors contacted me regarding these statements and the Brazilian RJ Debtors declined my request to file a clarifying statement, I submitted a declaration in the Brazilian Chapter 15 Proceeding to provide additional clarity to Coop's creditors of the status and impact of the Suspension of Payments Proceeding on Coop's restructuring.³⁸ Among other things, this declaration explained that a Dutch bankruptcy proceeding could result in a reorganization instead of a liquidation if a composition plan for Coop were proposed in accordance with Dutch bankruptcy law, accepted by creditors and ratified by the Dutch Court.

d. Oi S.A. and the Coop Board Refuse to Provide me with Basic Diligence Materials and Frustrate the Exercise of my Duties as the SoP Administrator

55. As SoP Administrator, I supervised the actions of the Coop Board and had the authority to take appropriate measures if I deemed any act of the Coop Board not to be in the best interests of Coop's creditors.³⁹ Although the Coop Board remained in control of Coop during the pendency of the Suspension of Payments Proceeding, without my consent, the Coop Board was prohibited from performing any acts of administration or disposal with regard to the

³⁷ See Shah Third Declaration. Subsequent to the filing of the Shah Third Declaration, certain creditors approached me with questions and comments regarding the Shah Third Declaration, as a result of which I concluded that certain statements made in the Shah Third Declaration were misunderstood by creditors.

³⁸ See Declaration of Jasper R. Berkenbosch, Solely in his Capacity as Administrator of Oi Basil Holdings Coöperatief U.A., In re OI S.A., No. 16-11791 [ECF No. 57] (Bankr. S.D.N.Y. Nov. 15, 2016).

³⁹ Dutch Insolvency Act § 228.

Coop estate.⁴⁰ These acts include assuming obligations on behalf of the Coop estate or binding the Coop estate in any manner.⁴¹

56. In an effort to fulfill my duties as the SoP Administrator and evaluate Coop's restructuring options, I maintained extensive contact with Oi S.A. and the Coop Board. Among other things, I held numerous videoconferences and in-person meetings with the Coop Board and Oi S.A. executives, as well as their Dutch, Brazilian and U.S. counsel, in Brazil, Portugal, London and the Netherlands.

57. During these discussions, it became apparent to me that Oi S.A. and the Coop Board were determined to ignore the Suspension of Payments Proceeding and their obligations to me as the SoP Administrator whenever Oi S.A. and the Coop Board determined Dutch law requirements might interfere with their objectives. Among other things, the Coop Board and Oi S.A. ignored my requests for basic information — such as individualized creditor lists for each of the Brazilian RJ Debtors necessary to evaluate the Brazilian RJ Plan with respect to the Coop Loan Claims and compensation to Coop and its creditors — and otherwise refused to provide me with a meaningful opportunity to satisfy my fiduciary obligations. Through this course of action, Oi S.A. and the Coop Board made my review and consent responsibilities impossible to discharge. Moreover, the Coop Board and Oi S.A. continued to submit filings on behalf of Coop, often without notifying me first or providing me with an opportunity to review the same, and to take other actions affecting Coop's assets, liabilities and legal rights in the Brazilian RJ Proceeding without obtaining my consent as required by Dutch law.⁴² Certain Coop

⁴⁰ Id.

⁴¹ Id.

⁴² As discussed in greater detail below, these and other actions by the Coop Board resulted in the Dutch Court of Appeals decision to convert the Suspension of Payments Proceeding to the Dutch Bankruptcy

NY Noteholders similarly expressed concern to me over the Coop Board's handling of the Suspension of Payments Proceeding and feared that the Coop Board would take actions prejudicial to Coop and its creditors, as it had done in the past. Other parties have expressed concerns that they are being excluded from the negotiations in Brazil as well.⁴³

58. During a meeting on September 1, 2016 in Rio de Janeiro, Brazil, I was informed of certain aspects of the Brazilian RJ Plan for the first time. Although I had previously requested written materials for further study, Oi S.A. did not provide me with a draft of the Brazilian RJ Plan or any other supporting materials. Consequently, I informed Oi S.A. that I could not consent to the Brazilian RJ Plan or its submission to Coop's creditors without additional information and analysis.

59. On September 5, 2016, the Brazilian RJ Plan was submitted in the Brazilian RJ Proceeding on behalf of all of the Brazilian RJ Debtors, including Coop (without my consent). In a second notice to creditors dated September 8, 2016, I informed Coop's creditors that more time was necessary to study the Brazilian RJ Plan and that absent my consent the plan would not be binding on Coop's estate.⁴⁴

(continued...)

Proceeding. See *infra* ¶¶ 62-66; see also Ex. B § 4.10 (stating that while Oi S.A. and the Coop Board "may claim that negotiations are proceeding positively with the creditors, a large group of creditors . . . have stated that [Oi S.A.] has not been negotiating with them at all.").

⁴³ *Statement and Reservation of Rights of the Steering Committee of the Ad Hoc Group of Bondholders of Oi S.A. and its Affiliates, In re OI S.A.*, No. 16-11791 (SHL) (Bankr. S.D.N.Y. May 22, 2017) [ECF No. 67], ¶ 4 (stating in a filing made by a group of holders of bonds issued or guaranteed by Oi S.A.: "Though nearly a year has passed since the commencement of the Brazilian Proceedings, little progress has been made: the Company has still not filed a credible plan in the Brazilian Court, *nor has it taken any substantive negotiations with its bondholders, the single largest constituency of its financial creditors.*") (emphasis added).

⁴⁴ Second Notice to Creditors and Noteholders (Sept. 8, 2016) available at http://oibrasilholdingscoop-administration.com/images/20160908_Second_notice_to_Oi_creditors_and_or_bondholders.pdf.

*e. Conversion of the Suspension of Payments
Proceeding to a Dutch Bankruptcy Proceeding*

60. On December 1, 2016, in my capacity as SoP Administrator, I filed a request to convert Coop's Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding. For similar reasons, the Dutch administrator appointed in PTIF's ongoing suspension of payments proceeding in the Netherlands also filed a request to convert PTIF's suspension of payments proceeding to a bankruptcy proceeding that same day. These requests were joined by certain members of the IBC Steering Committee and Citicorp Trustee Company Ltd., the indenture trustee for the PTIF Notes.

61. On February 2, 2017 the Dutch Court denied the conversion requests for both Coop and PTIF. However, in its decision, the Dutch Court stressed that it was necessary for the Coop Board to cooperate with me, as the SoP Administrator, in order to bring the Suspension of Payments Proceeding to a favorable conclusion.⁴⁵ Certain members of the IBC Steering Committee appealed that decision while I renewed my efforts to work with the Coop Board and Oi S.A., as instructed by the Dutch Court. In the weeks that followed, I sent a letter to the Coop Board,⁴⁶ held a videoconference with the management of Oi S.A. and its Dutch, Brazilian and U.S. counsel, and made several requests for financial information I needed to comply with my statutory duties. Unfortunately, as with my prior attempts to cooperate, my efforts were unavailing: no additional information was provided to me, the demands in my letter went unanswered and Oi S.A. continued to disregard Coop's creditors and me generally.

⁴⁵ Ex. H § 8.20.

⁴⁶ See Ex. I.

62. On April 19, 2017 (the "Conversion Date"), the Dutch Court of Appeals overturned the Dutch Court decision and converted both Coop's and PTIF's suspension of payments proceedings to bankruptcy proceedings.⁴⁷ To oversee the Dutch Bankruptcy Proceeding for Coop, the Dutch Court of Appeals — the second highest court in the Netherlands — appointed (a) me as the Insolvency Trustee and (b) Mr. W.F. Korthals Altes — a sitting judge of the Dutch Court, who also served as the supervisory judge in the Suspension of Payments Proceeding — as the supervisory judge (the "Dutch Supervisory Judge").⁴⁸ Immediately following my appointment, I sent the Coop Board a letter informing it of the Dutch Court of Appeals Decision, my appointment as the Insolvency Trustee for Coop, the corresponding impact under Dutch law and implications for the Coop Board.⁴⁹

63. The Dutch Court of Appeals Decision contained several critical determinations.

64. *First*, the Dutch Court of Appeals independently determined that Coop's COMI was in the Netherlands, which finding was not appealed to the Dutch Supreme Court and is now *res judicata* in the Netherlands.⁵⁰ Under Dutch law, final judgments with respect to a disputed legal issue will be binding on those same parties in a subsequent legal proceeding.⁵¹ Similar to U.S. law, the purpose of this doctrine in the Netherlands is to end disputes that concern the same legal relationship, regardless of what actions are brought.⁵² As such, a fact or

⁴⁷ Ex. B §§ 4.12-4.13.

⁴⁸ The Dutch Court of Appeals similarly appointed the PTIF Administrator as the trustee (curator) for PTIF (in such capacity, the "PTIF Insolvency Trustee").

⁴⁹ See Ex. J.

⁵⁰ Ex. B § 4.15 (stating that "the centre of [Coop's] main interests is located in the Netherlands").

⁵¹ Dutch Code of Civil Procedure, Art. 236.

⁵² Dutch Supreme Court, 18 September 1992, ECLI:NL:HR:1992:ZC0683, NJ 1992, 747).

right that has been established by a final, irrevocable decision of a Dutch court (including any issue determined in that decision that has not been disputed by the parties in that proceeding) carries with it the force of res judicata.⁵³

65. *Second*, the Dutch Court of Appeals found as a basis for its ruling that certain actions taken by the Coop Board and/or Oi S.A. and its affiliates were improper and/or prejudicial:

- (a) the Coop Board and Oi S.A. failed to answer the SoP Administrator's questions regarding Coop's financial position, loan claims and other relevant matters, from which the Dutch Court of Appeals concluded that the Coop Board did not have "any real readiness to enter into genuine and worthwhile consultations with the [SoP Administrator] about the financial implications of the RJ composition (in draft form);"
- (b) Oi S.A. and the Coop Board proposed in Coop's name a revised version of the Brazilian RJ Plan in the Brazilian RJ Proceeding without first discussing the revisions with the SoP Administrator; and
- (c) the Brazilian RJ Plan, as revised, continued to ignore the Coop Loan Claims against Oi S.A. and Oi Móvel and entirely disregards Dutch law insofar as the proponents failed to obtain the required consent of the SoP Administrator.⁵⁴

In its decision rejecting the appeal of the Dutch Court of Appeals Decision (as discussed in greater detail below in paragraph 69), the Dutch Supreme Court agreed with each of the foregoing points.

66. *Third*, after examining the facts and circumstances surrounding the transfers from Coop to each of Oi S.A. and Oi Móvel that occurred prior to the commencement of the Brazilian RJ Proceeding and the Suspension of Payments Proceeding, the Dutch Court of Appeals concluded that there was sufficient evidence that these pre-bankruptcy actions

⁵³ See Opinion of the Advocate-General in Dutch Supreme Court 24 September 2004, ECLI:NL:PHR:2004:AP:6874, NJ 2006/200.

⁵⁴ Ex. B §§ 3.7-3.8, 4.6, 4.9, 4.12 & 4.13.

prejudiced Coop's creditors. This fact alone supported an independent basis to convert the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding.⁵⁵

67. Coop and Oi S.A. appealed the Dutch Court of Appeals' legal conclusions to the Dutch Supreme Court, but the factual finding that Coop's COMI is in the Netherlands is not subject to appeal.

f. The Dutch Supreme Court Decision

68. On June 21, 2017, the Advocate General of the Dutch Supreme Court issued a substantiated opinion advising the Dutch Supreme Court that the grounds for Coop's appeal of the Dutch Court of Appeals Decision should be rejected.⁵⁶ In doing so, the Advocate General (a) agreed with the Dutch Court of Appeals that the Coop Board prejudiced Coop and its creditors by approving Coop's loans to Oi Móvel and (b) stated that the Coop Board seems to have acted with a view that was "too one-sided" towards Oi S.A. and its affiliates to the detriment of Coop and its creditors.⁵⁷ While the Advocate General's advisory opinions are meant solely to assist the Dutch Supreme Court's deliberations and are not binding, they often provide a good indication of how the Dutch Supreme Court will ultimately rule on a given appeal pending before it.

⁵⁵ Id. § 4.5 (describing the transfer of approximately EUR 1.6 billion from Coop to Oi Móvel in early March 2016 as "highly suspicious").

⁵⁶ See Opinion of Advocate General (the "AG Opinion"). Because opinions of the Advocate General do not become publicly available until the Dutch Supreme Court renders its decision on the appeal, the AG Opinion has not been filed as an exhibit to my Declaration. When the official English translation of the Dutch Supreme Court Decision (as defined below) becomes available, the Insolvency Trustee will file a supplement with this Court attaching the Dutch Supreme Court Decision (including the AG Opinion attached thereto).

⁵⁷ AG Opinion ¶ 4.15.

69. On July 7, 2017, the Dutch Supreme Court issued its decision rejecting the appeal of the Dutch Court of Appeals Decision. In doing so, the Dutch Supreme Court ruled that the Dutch Bankruptcy Proceeding should remain in place with me as the Insolvency Trustee for Coop.⁵⁸ On the same day, the Dutch Supreme Court also issued a similar decision with respect to PTIF and ruled that the PTIF Insolvency Trustee should remain in place for PTIF.⁵⁹

3. *The Import of the Dutch Bankruptcy Proceeding*

70. Pursuant to section 20 of the Dutch Insolvency Act, the Dutch Bankruptcy Proceeding serves to administer all assets of the Coop estate, wherever those assets are located. Under Dutch law, decisions of Dutch courts carry extraterritorial effect.⁶⁰ In other words, the Dutch Court of Appeals Decision that appointed me as the Insolvency Trustee for Coop authorized me to act on Coop's behalf worldwide and without regard as to whether the laws of the local jurisdiction would otherwise prevent me from taking action in that territory.

71. Upon the commencement of the Dutch Bankruptcy Proceeding, Coop (and the Coop Board) lost any right to dispose of and control Coop's assets.⁶¹ Instead, I became vested with the exclusive authority to act on behalf of the Coop estate — including the sole right to bring and defend against any legal action on behalf of the Coop estate — and the duty to safeguard the interests of Coop's creditors.⁶² Also, I became empowered to preserve, collect and liquidate all of Coop's assets for distribution to creditors through the Dutch Bankruptcy

⁵⁸ Dutch Supreme Court 7 July 2017, ECLI:NL:HR:2017:1280 (the "Dutch Supreme Court Decision"). As stated in footnote 56 above, when the official English translation of the Dutch Supreme Court Decision becomes available, the Insolvency Trustee will file a supplement with this Court.

⁵⁹ Dutch Supreme Court 7 July 2017, ECLI:NL:HR:2017:1281.

⁶⁰ See Dutch Supreme Court 15 April 1995, NJ 1955/542 (Kallir/Comfin).

⁶¹ Dutch Insolvency Act § 23.

⁶² Id. §§ 23, 25 & 68.

Proceeding.⁶³ In this respect, I understand that my role is roughly equivalent to a trustee appointed in a United States bankruptcy proceeding.

72. The Coop Board can propose a composition plan that will effectuate a reorganization, as opposed to a liquidation, provided that such composition plan complies with the requirements of Dutch law. One such requirement is approval of any plan of reorganization by vote of Coop's creditors as part of the Dutch Bankruptcy Proceeding. There is no treaty between Brazil and the Netherlands on the mutual recognition and enforcement of judicial decisions, so any Brazilian plan will be ineffective in the Netherlands and the EU absent the approval of such a Dutch law compliant plan in the Dutch Bankruptcy Proceeding.⁶⁴ This approval must take the form of a stand-alone Dutch composition plan, even if it merely gives effect to aspects of the broader Brazilian plan.

D. Recent Developments

1. *The Brazilian RJ Proceeding and the Brazilian Injunction*

73. Despite recent developments in the Dutch Bankruptcy Proceeding, Oi S.A. appears to be proceeding with its planned restructuring of Coop — without consulting or cooperating with me. To the contrary, Oi S.A. continues to undermine my ability to discharge my fiduciary obligations under Dutch law. For example, on May 29, 2017, Oi S.A. issued a public notice of the consolidated list of creditors presented on behalf of the Brazilian RJ Debtors, including Coop, in connection with the Brazilian RJ Proceeding. This notice starts the

⁶³ Id. § 68; see also Ex. D, ¶ 2.

⁶⁴ See e.g., Ex. F § 6.1.

countdown to the deadlines to (a) challenge the creditor list before the Brazilian RJ Court (June 8, 2017); and (b) file objections to the Brazilian RJ Plan (June 28, 2017).⁶⁵

74. Shortly after losing on the authority issue in the Dutch Court of Appeals, Oi S.A. sought an injunctive order in the Brazilian RJ Proceeding on April 25, 2017. That injunction was initially sought unsuccessfully on an *ex parte* basis but was subsequently determined on significantly limited notice and with a very limited opportunity to submit papers and be heard. The injunction purports to block me from taking any actions on behalf of Coop and threatens the imposition of fines against me for any breaches (the "Brazilian Injunction").

75. On May 9, 2017, the Dutch Supervisory Judge sent a letter to Judge Fernando C.F. Viana presiding over the Brazilian RJ Proceeding (the "Brazilian RJ Judge") informing the Brazilian RJ Court of the conversion of the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding, and encouraging on-going cooperation between the Dutch and Brazilian courts with respect to the insolvency proceedings involving Coop (as well as PTIF).⁶⁶ It is my understanding that to date, the Dutch Supervisory Judge has not received a response from the Brazilian RJ Judge.

76. On May 12, 2017, the Brazilian RJ Court granted Oi S.A.'s request and issued the Brazilian Injunction.⁶⁷ Among other things, the Brazilian Injunction purports to (a) limit my ability to act in accordance with my fiduciary responsibilities under Dutch law and (b) maintain Oi S.A.'s and the Coop Board's control over Coop's estate, even though they had

⁶⁵ See Publication of Public Notice of the List of Creditors presented by the Brazilian Judicial Administrator, dated May 29, 2017, available at http://ir.oi.com.br/oi2012/web/conteudo_pt.asp?idioma=1&tipo=43100&conta=44&id=245222.

⁶⁶ See Ex. K. Prior to sending this letter, the Dutch Supervisory Judge had contacted the Brazilian RJ Judge during the course of the Suspension of Payments Proceeding to encourage cooperation between the courts.

⁶⁷ See Ex. L.

already been dispossessed of all such authority and control as a matter of Dutch law in a fully contested proceeding between the affected parties.⁶⁸

77. On June 7, 2017, with the express authorization of the Dutch Supervisory Judge, I filed an appeal with the Court of the State of Rio de Janeiro, Eighth Civil Chamber (the "Brazilian Court of Appeals") and sought a stay of the Brazilian Injunction.⁶⁹

78. On June 13, 2017, the Brazilian Court of Appeals denied the stay request.⁷⁰ However, in its decision denying the stay, the Brazilian Court of Appeals stated that the Brazilian Injunction applies only to Coop's assets and claims in Brazil, and foreign jurisdictions retain the ability to interpret whether the Brazilian Injunction carries any effect with respect to actions taken within the applicable jurisdiction. Similarly, in response to a motion to clarify its ruling, on June 29, 2017, the Brazilian Court of Appeals issued a decision stating that the Brazilian Injunction has extraterritorial effect "*except the cases in which foreign jurisdiction concludes otherwise in that regard . . . due to the principle of sovereignty of each State, and consequently, its Jurisdiction.*"⁷¹

79. On June 1, 2017 and again on July 5, 2017, the Dutch Supervisory Judge determined that the Brazilian Injunction is not effective in the Netherlands.⁷² In particular, the Dutch Supervisory Judge has stated that the Brazilian Injunction runs contrary to Dutch law and international standards of comity:

⁶⁸ See Ex. D ¶ 5; Ex. C ¶ 4.

⁶⁹ Id. ¶ 7.

⁷⁰ See Ex. M.

⁷¹ See Ex. N.

⁷² Ex. D ¶ 5 ("Due to the absence of a treaty, the Brazilian [Injunction] lacks direct effect in The Netherlands and cannot be enforced in The Netherlands"); Ex. C ¶ 5(same).

The [Brazilian Injunction] interferes with the authority of Dutch law in that it prohibits [the Insolvency Trustee] from exercising [his] duties under the Dutch [Insolvency] Act. Due to the absence of a treaty the [Brazilian Injunction] lacks direct effect in The Netherlands and cannot be enforced in The Netherlands.⁷³

80. As of the date hereof, the Brazilian Court of Appeals has not rendered a decision on the merits of the appeal of the Brazilian Injunction.

2. *The Dutch Supervisory Judge Authorizes me to
File this Chapter 15 Proceeding and Obtain Financing*

81. On July 5, 2017, the Dutch Supervisory Judge approved my request to commence this chapter 15 proceeding.⁷⁴ In approving the request, the Dutch Supervisory Judge again reiterated that Coop's COMI is located in the Netherlands, and that (i) I have exclusive authority to act on behalf of the bankrupt estate of Coop, in the Netherlands and elsewhere, (ii) the Coop Board, by operation of law has lost the authority to perform any acts of administration and disposition regarding Coop's estate (including recovering on account of the Coop Loan Claims), and (iii) I am authorized to file the Voluntary Petition as necessary to protect the interests of Coop's creditors.⁷⁵

82. Prior to filing this Verified Petition and Motion, with the permission of the Dutch Supervisory Judge, I obtained financing in the form of a \$5 million loan provided by the IBC Steering Committee (the "Coop Financing").⁷⁶ The Coop Financing is currently structured as an unsecured facility that I may use in my sole discretion, payable from the proceeds of any recoveries on account of the Potential Causes of Action and has priority status in the Dutch

⁷³ Ex. D ¶ 5.

⁷⁴ Ex. C ¶ 10.

⁷⁵ Id.

⁷⁶ I anticipate filing a motion with this Court for recognition and enforcement of the Dutch Supervisory Judge's order authorizing me to obtain the Coop Financing on behalf of Coop.


Bankruptcy Proceeding. The structure and amount of the Coop Financing is further evidence that I have the support of Coop's substantial creditor constituencies.⁷⁷

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⁷⁷ The description of the Coop Financing contained in this paragraph is qualified in its entirety by the actual terms of the Coop Financing. I intend to file a motion for recognition of the Coop Financing and will request that such motion be heard by the Court at the same time as the hearing on this Verified Petition and Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of
the United States of America that the foregoing is true and correct.

Dated: July 7, 2017

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Jasper R. Berkenbosch
Insolvency Trustee

TABLE OF EXHIBITS

- A. Timeline
- B. Dutch Court of Appeals Decision
- C. Dutch SJ Chapter 15 Decision
- D. Dutch SJ Injunction Decision
- E. Coop Board Minutes
- F. SoP Petition
- G. SoP Commencement Order
- H. Dutch Court Conversion Decision
- I. Letter from Mr. Berkenbosch to the Coop Board dated March 2, 2017
- J. Letter from Mr. Berkenbosch to the Coop Board dated April 20, 2017
- K. Letter from the Dutch Supervisory Judge to Brazilian RJ Judge dated May 9, 2017
- L. Brazilian Injunction
- M. Brazilian Injunction Stay Decision
- N. Brazilian Injunction Clarification