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

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

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

-----X
-----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).

**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 INSOLVENCY TRUSTEE
AS THE FOREIGN REPRESENTATIVE; (III) MODIFYING THE
PRIOR RECOGNITION ORDER; (IV) MODIFYING THE PRIOR JOINT
ADMINISTRATION ORDER AND (V) GRANTING CERTAIN RELATED RELIEF**

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TO THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE:

Pursuant to sections 105, 1504, 1507, 1509, 1515, 1516, 1517, 1520, 1521 and 1522 of title 11 of the United States Code (the "Bankruptcy Code"), Jasper R. Berkenbosch ("Mr. Berkenbosch"), solely in his capacity under Dutch law 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"), by and through his undersigned counsel, respectfully submits this verified petition and motion (this "Verified Petition and Motion") in support of the voluntary petition [ECF No. 1], filed concurrently herewith (the "Voluntary Petition"), and hereby respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"):

- (i) modifying the Court's prior *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* entered on July 22, 2016, In re OI S.A., No. 16-11791 [ECF No. 38] (Bankr. S.D.N.Y. July 22, 2016) (the "Prior Recognition Order") to terminate recognition of the Brazilian RJ Proceeding (as defined below) for Coop and Ojas N. Shah ("Mr. Shah") as the Foreign Representative (as defined below) for Coop (in such capacity, the "Oi Foreign Representative");
- (ii) granting recognition, pursuant to section 1517 of the Bankruptcy Code, of the Dutch Bankruptcy Proceeding as the foreign main proceeding, as defined in section 1502(4) of the Bankruptcy Code, with respect to Coop (the "Dutch Chapter 15 Proceeding");

- (iii) recognizing the Insolvency Trustee as the foreign representative for Coop (in such capacity, the "Foreign Representative"), as defined in section 101(24) of the Bankruptcy Code, in the Dutch Chapter 15 Proceeding;
- (iv) modifying the Court's prior *Order Directing Joint Administration of Cases* entered on June 21, 2016, In re Oi Brasil Holdings Cooperatief U.A., No. 16-11794 [ECF No. 3] (Bankr. S.D.N.Y. June 21, 2016), and In re OI S.A., No. 16-11791 [ECF No. 11] (Bankr. S.D.N.Y. June 21, 2016) (the "Prior Joint Administration Order"); and
- (v) granting such other and further relief as the Court may deem just and proper.

In support of the relief requested herein, filed contemporaneously herewith is the *Declaration of Jasper R. Berkenbosch in Support of Verified Petition and Motion for Related Relief* (together with the exhibits thereto, the "Berkenbosch Declaration"), and in further support of the relief requested, the Insolvency Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Insolvency Trustee for Coop has commenced this chapter 15 proceeding with the authorization of the Dutch Court and the support of Coop's major creditors. The overall purpose of this Verified Petition and Motion is to modify the Court's Prior Recognition Order, dated July 22, 2016, so as to recognize the recently instituted Dutch Bankruptcy Proceeding as the foreign main proceeding for Coop — a Dutch cooperative with its registered office, assets and creditors in the Netherlands that is now under the exclusive control of the Insolvency Trustee, a Dutch citizen recently appointed by the Dutch court as the fiduciary with sole and exclusive control of the Coop estate.² The relief sought by this Verified Petition

² Prior to his appointment as the Insolvency Trustee on April 19, 2017, Mr. Berkenbosch was the court-appointed fiduciary for Coop, known as an administrator (in such capacity, the "SoP Administrator"), in the suspension of payments proceeding (the "Suspension of Payments Proceeding"). That proceeding was voluntarily commenced by Coop on August 9, 2016 at the direction of the Coop's board of directors (the "Coop Board") and Coop's sole member, Oi S.A.

and Motion is necessary to ensure that Coop's restructuring takes place pursuant to an open and fair process in the Dutch Bankruptcy Proceeding and in accordance with Dutch law.³

2. Almost a year ago, just after billions of Euros were transferred out of Coop's Netherlands accounts to Oi S.A. and Oi Móvel S.A. ("Oi Móvel") in Brazil on the eve of commencing insolvency proceedings in Brazil, Oi S.A. and Coop⁴ obtained recognition from this Court of the Brazilian RJ Proceeding as the foreign main proceeding for Coop. To obtain that recognition, Oi S.A. and Coop contended that Coop's center of main interests ("COMI") was in Brazil.⁵ A mere four days later, Oi S.A. and Coop approached the Dutch Court and requested the appointment of a silent administrator in order to prepare for the insolvency proceeding they would voluntarily initiate in the Dutch Court two weeks later. To effect that relief, Coop made certain factual statements in its petition aimed at establishing that Coop's COMI was in the Netherlands so that the Dutch Court had jurisdiction to grant the requested relief. This proposition was directly contrary to contentions made in Brazil and to this Court. At no point did the Oi Foreign Representative or Oi S.A. disclose their actions or the Dutch Court's finding to this Court. Nor has this Court been informed that the Dutch Court's finding that Coop's COMI is in the Netherlands was recently affirmed by the Dutch Court of Appeals when it independently determined that Coop's COMI is in the Netherlands. Coop and Oi S.A. did not contest this

³ As there is no treaty between Brazil and the Netherlands governing the mutual recognition and enforcement of judicial decisions, following the initiation of the Dutch Bankruptcy Proceeding, the only way to ensure formal recognition of any restructuring that may be approved for Coop in the Brazilian RJ Proceeding is the approval of a separate restructuring plan for Coop pursuant to Dutch law in the Netherlands. It is that plan which would form the basis of any related approval that may be necessary from this Court.

⁴ At that time Coop was acting through Oi S.A.'s appointee on the Coop Board.

⁵ 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").

finding on appeal — nor in any other Dutch proceeding — which means that the COMI finding is now final and binding as to Coop and Oi S.A.⁶

3. After voluntarily submitting Coop to the jurisdiction of the Dutch courts by instituting the Suspension of Payments Proceeding there, Oi S.A. and the Coop Board then proceeded to ignore their duties under Dutch law and actively interfered with Mr. Berkenbosch's attempts to discharge his duties as the court-appointed fiduciary for Coop. In his prior role as the SoP Administrator, Mr. Berkenbosch made numerous attempts to work cooperatively with the Coop Board and Oi S.A. in order to fulfill his duties. Those duties included safeguarding the interests of Coop's creditors and taking an active role in the custody of Coop's assets, including the substantial claims Coop holds against Oi S.A. and Oi Móvel. However, notwithstanding Mr. Berkenbosch's best efforts, his outreach was rebuffed, his inquiries went unanswered and his instructions were disregarded. These facts prompted the Dutch Court of Appeals to determine, over the objections of the Coop Board and Oi S.A., to convert the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding and concurrently appoint Mr. Berkenbosch as the Insolvency Trustee for Coop.

4. Notwithstanding the rebuke of the Dutch Court of Appeals⁷ and Mr. Berkenbosch's continuing role as the independent, court-appointed fiduciary for Coop,

⁶ 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 also attached as Exhibit B to the Berkenbosch Declaration (the "Dutch Court of Appeals Decision")), § 4.15; see also Decision of Mr. W.F. Korthals Altes, Senior Judge of the Amsterdam District Court, in his Capacity as Supervisory Judge in the Bankruptcy of Oi Brasil Holdings Coöperatief U.A., dated July 5, 2017, attached as Exhibit C to the Berkenbosch Declaration (the "Dutch SJ Chapter 15 Decision") ¶ 4.

As described in greater detail below, the Dutch Court's COMI finding is now final and not subject to any appeal being pursued by Oi S.A. in the Netherlands.

⁷ See, e.g., Dutch Court of Appeals Decision § 4.12 ("[The Coop Board] is not prepared to answer [Mr. Berkenbosch's] questions which the [Dutch] Court of Appeal[s] considers are relevant to this matter . . . the answer given by [the Coop Board] . . . does not bear witness to any willingness to enter into genuine and worthwhile consultations with [Mr. Berkenbosch]; id. § 4.6 (holding that the waiver of Coop's claims

Oi S.A. and the Coop Board have continued to ignore his authority and impair his ability to discharge his fiduciary duties. In fact, they have doubled-down on their intransigent behavior. They continue to refuse to cooperate, negotiate with or provide information to the Insolvency Trustee, including even basic information concerning the proposed Brazilian RJ Plan. Despite litigating and losing in the Dutch courts on the question of Mr. Berkenbosch's authority to act for Coop, Oi S.A. and the Coop Board have continued to file pleadings and take actions on behalf of Coop directly contrary to Mr. Berkenbosch's role as Coop's administrator under Dutch law. Most egregiously, in an attempt to re-litigate a point it had already lost in the Netherlands, Oi S.A. returned to its local courts in Brazil to obtain an overbroad injunctive order without notice to the Insolvency Trustee to prohibit the Insolvency Trustee from acting on behalf of the Coop estate, to prevent the Insolvency Trustee from using Coop's assets to pay his legal advisors and to impose significant monetary fines if he determined, as a court-appointed fiduciary, that he must take action to protect the Coop estate.

5. This behavior on the part of Oi S.A. and its appointees on the Coop Board fits a pattern of prejudicing Coop and its creditors to favor Oi S.A.'s interests. While acting as the SoP Administrator, Mr. Berkenbosch learned that in the months before Oi S.A. and certain of its affiliates, including Coop and Oi Móvel (collectively, the "Brazilian RJ Debtors"), commenced insolvency proceedings in Brazil, certain "highly suspicious" transactions stripped

(continued...)

against Oi S.A. and Oi Móvel in the Brazilian RJ Proceeding required Mr. Berkenbosch's consent as the SoP Administrator and the Coop Board's failure to obtain this consent was grounds for conversion of the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding).

Coop of billions of Euros on the eve of commencing actions to restructure its debts.⁸ For example:

- on March 3, 2016, Oi S.A., as the sole member of Coop, replaced a Dutch entity serving on the Coop Board with an Oi S.A. employee;
- on March 3 and March 7, 2016, the new Coop Board, over the objection of certain creditors, transferred approximately EUR 1.6 billion of cash to Oi Móvel solely in exchange for a claim for repayment;
- on March 9, 2016, Oi S.A. publicly announced that it had retained a financial advisor to assist with a restructuring of its liabilities;
- on March 17, 2016, Coop and Oi S.A. amended the terms of certain agreements that governed Coop's loans with Oi S.A. and its Dutch affiliate, Portugal Telecom International Finance B.V. ("PTIF");
- on June 20, 2016, the Coop Board met to authorize Coop's commencement of insolvency proceedings and, as evidenced in the meeting minutes, were assured that Coop's claims against Oi S.A. and Oi Móvel would be treated as unsecured claims and rank *pari passu* with other unsecured creditors' claims; and
- after filing the Brazilian RJ Proceeding, on September 5, 2016, the Brazilian RJ Debtors presented their proposed composition plan (the "Brazilian RJ Plan") which disregards Coop's claims totaling approximately EUR 4.0 billion against Oi S.A. and Coop's claims totaling approximately EUR 1.6 billion against Oi Móvel when calculating creditor recoveries.

6. Now, the same parties that were divested of control of Coop by the Dutch courts (including the Supreme Court of the Netherlands (the "Dutch Supreme Court")) due to actions that were found to be prejudicial to Coop's creditors continue to pursue a restructuring in Brazil that undermines the interests of Coop and its creditors. This proposed restructuring ignores intercompany claims and treats all creditors of all Brazilian RJ Debtors the same, resulting in diminished or even zero recovery for Coop's and Coop's creditors' claims.⁹

⁸ See id. at § 4.5 (describing the transfer of EUR 1.6 billion from Coop to Oi Móvel in early March 2016 as "highly suspicious").

⁹ The precise impact upon the potential recoveries of Coop's creditors caused by this pooling of liabilities and recoveries cannot currently be calculated because Oi S.A. has refused to provide the Insolvency

7. For example, under the Brazilian RJ Plan, holders of two series of notes issued by Coop (the "Coop NY Noteholders") — 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")¹⁰ — do not seem to receive any recovery on account of their direct claims against Coop, which are proposed to be discharged in exchange for zero consideration. Instead, the Coop NY Noteholders will receive only a limited recovery on account of their guarantee claims against Oi S.A. as part of a single class of unsecured creditors of all of the Brazilian RJ Debtors who will share in a single pool of new convertible securities of unknown value and conditions.¹¹

8. Similarly, PTIF — Coop's single largest creditor (a fellow Dutch entity with a claim of more than approximately EUR 3.8 billion) — is ignored and its creditors receive only a very limited recovery under the Brazilian RJ Plan. Such treatment of PTIF is clearly contrary to the expectations of PTIF and its creditors, who would expect to recover on their claims against Coop in the Netherlands as part of a Dutch restructuring (both companies being Dutch).

9. Given that (a) Coop's estate is now under the exclusive control of the court-appointed Insolvency Trustee in the Dutch Bankruptcy Proceeding, (b) Coop has been subject to separate insolvency proceedings in the Netherlands, voluntarily commenced by the

(continued...)

Trustee with individualized creditor lists for each of the Brazilian RJ Debtors or other basic information concerning the terms of the proposed Brazilian RJ Plan.

¹⁰ The Coop NY Notes are governed by New York law.

¹¹ It also appears that, to avoid potential tax liabilities, the Coop loans to Oi S.A. and Oi Móvel will be reinstated in connection with the restructuring proposed in the Brazilian RJ Proceeding, even though such loans are ignored when calculating the recoveries of Coop's creditors. In such a case, Oi S.A. would obtain the benefits associated with the intercompany loans but not compensate Coop or its creditors for its use.

Coop Board with the support of Oi S.A., for over eleven (11) months, (c) Coop has significant claims and causes of action under Dutch law that are its most valuable assets and (d) claims to recover certain of the "highly suspicious" transfers to the Oi Parties have already been commenced in the Netherlands, there is a more than sufficient basis for this Court to determine that Coop's COMI is in the Netherlands. Even absent the aforementioned changes in circumstances (all of which post-date the initial filings made in this Court), key facts that should have informed this Court's prior COMI analysis were glaringly omitted from the filings made at the time, such as the fact that Coop's largest creditor, PTIF, is a Dutch entity that issued its bonds in Europe before it was acquired by Oi S.A. and its affiliates.

10. Thus, the Court should recognize the Dutch Bankruptcy Proceeding as the foreign main proceeding for Coop — thereby giving effect to the final, irrevocable rulings to the same effect by the Dutch Court and the Dutch Court of Appeals — and recognize the Insolvency Trustee as Coop's Foreign Representative in that proceeding. In addition, as Coop's COMI is in the Netherlands (and not Brazil), the Court should terminate its prior recognition of the Brazilian RJ Proceeding and the Oi Foreign Representative with respect to Coop. Finally, the Court should modify its Prior Joint Administration Order and grant the other relief requested to effectuate the administration of the Dutch Chapter 15 Proceeding (and to the extent not terminated, the Brazilian Chapter 15 Proceeding).

BACKGROUND¹²

I. OI S.A. AND COOP

A. Oi S.A.

11. 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 generally consists of two lines of business in Brazil: (a) a cellular telecommunications business owned and operated principally through 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.

12. 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 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.

¹² A timeline of the events described in this Verified Petition and Motion is attached as Exhibit A to the Berkenbosch Declaration.

B. Coop

13. 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, the Netherlands. Until April 19, 2017 — the day the Dutch Court of Appeals declared Coop bankrupt¹³ — 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.

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

15. 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.

C. Coop's Assets and Liabilities

16. 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 and approximately EUR 3.8 billion owed

¹³ See Dutch Court of Appeals Decision.

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.

1) *Coop's Liabilities*

a. The Coop NY Notes

17. In 2012 and 2015, Coop issued the unsecured Coop NY Notes, with a face value of approximately EUR 1.9 billion.¹⁴ As the issuer of the Coop NY Notes, Coop is primarily responsible for their repayment. The Coop NY Notes are guaranteed by Oi S.A.

18. 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 Coop NY Noteholders appear to generally consist of professional and retail investors located in the United States and the EU.

19. 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

¹⁴ 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 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.

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.¹⁵

b. The PTIF Loan Agreement and
the Transfer of Funds from PTIF to Coop

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

21. 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").

22. 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.

23. 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

¹⁵ 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; see, e.g., In re Berau Capital Resources Pte Ltd., 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015) (holding choice of law provision and contract rights under indenture sufficient to satisfy property requirement for eligibility to file chapter 15 recognition proceedings in the United States).

also designates the courts of the Netherlands as the exclusive jurisdiction to settle any matters arising out of the PTIF Loan Agreement.¹⁶

2) *Coop's Assets*

a. Coop's Tangible Assets

24. Coop's tangible assets, as far as the Insolvency Trustee is 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 court-controlled bankruptcy account with KAS Bank N.V., to which the balance of the ABN account was transferred upon the commencement of the Dutch Bankruptcy Proceeding, 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");¹⁷ and (c) a bank account at Citibank (New York) with approximately USD 50,000 held in trust by Jones Day.

b. Coop's Intangible Assets

25. Coop's intangible assets 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").

¹⁶ PTIF Loan Agreement §§ 6.5 & 8.1.

¹⁷ White & Case currently represents Oi S.A. and Oi Móvel, both of which are defendants in the *actio Pauliana* initiated by Coop (as described below in paragraph 29), 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.

The Coop Loan Claims

26. 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.

27. Although the Brazilian Verified Petition placed significant emphasis on the Coop Loan Claims as a basis for establishing Coop's COMI in Brazil,¹⁸ under 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 the Insolvency Trustee despite repeated requests.

The Potential Claims and Causes of Action

28. The actions of Oi S.A. in remitting Coop's cash assets to Brazil 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),¹⁹ actions arising from wrongful / unlawful acts,²⁰ breaches of fiduciary duty by the Coop Board²¹ and actions arising from the potential personal liability of the members of the Coop Board.²² Some or all of these Potential Causes of Action are to be pursued

¹⁸ See 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.").

¹⁹ Dutch Insolvency Act §§ 42-47.

²⁰ Dutch Civil Code § 6:162.

²¹ Id. § 2:9.

²² Id. §§ 2:248, 2:50a, 2:53a & 6:162.

in the Netherlands (where the harm occurred) and involve claims with a face value of billions of Euros.²³

29. On May 30, 2017, the Insolvency Trustee commenced the first proceeding related to the Potential Causes of Action by instituting an *actio Pauliana* in the Netherlands with the purpose of unwinding the 2016 loans from Coop to Oi Móvel.²⁴ The International Bondholder Committee and the PTIF Insolvency Trustee (as defined below) have expressed support for the Insolvency Trustee's prosecution of the Potential Causes of Action in the Netherlands and his efforts to restore the value of the Coop estate.

The Tax Claim

30. 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.

II. EVENTS LEADING TO COOP'S INSOLVENCY PROCEEDINGS

A. Oi S.A.'s Financial Distress

31. 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.

²³ 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. The Insolvency Trustee continues 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 the Insolvency Trustee's right to pursue any and all causes of action in any and all relevant jurisdictions.

²⁴ See *Writ of Summons and Interim Application for an Order Granting Provisional Relief*, C/13/630582 / HA ZA 17-612.

32. 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.

33. 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.

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

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

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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

35. As the financial condition of Oi S.A. continued its rapid 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 4.²⁵ 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

²⁵ 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)
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
4	March 7, 2016	Oi Móvel	37,000,000.00
2	April 30, 2016	Oi S.A.	37,165,208.45

36. 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.

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

37. 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.

38. 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.

39. 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, 2025.²⁶

²⁶ 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).

III. THE INSOLVENCY PROCEEDINGS

40. 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.

A. Brazil

1) *The Brazilian RJ Proceeding and Brazilian Chapter 15 Proceeding*

41. 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 reorganization proceedings (the "Brazilian RJ Proceeding") in the *7a Vara Empresarial do Rio de Janeiro* (Seventh Business Court of Rio de Janeiro) (the "Brazilian RJ Court"). 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 as 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.²⁷

42. One day later, on June 21, 2016, Mr. Shah,²⁸ in his capacity as the purported foreign representative of Oi S.A., Coop, Oi Móvel and Telemar (collectively,

²⁷ Coop Board Meeting Minutes, dated June 20, 2016, attached as Exhibit E to Berkenbosch Declaration (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].").

²⁸ 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*

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.²⁹ 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.³⁰

43. 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 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 foreign representative of Coop authorized to act on behalf of Coop in the Brazilian Chapter 15 Proceeding.³¹

2) *The Brazilian RJ Plan*

44. 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

(continued...)

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.

²⁹ See Brazilian Verified Petition.

³⁰ 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 Cooperatief 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.

³¹ Prior Recognition Order ¶¶ 2-3.

amendments to the Brazilian RJ Plan and that Oi S.A. would seek approval of the proposed amendments from the Brazilian RJ Court.³² Marco Schroeder, the chief executive officer of Oi S.A., stated that the Brazilian RJ Plan, as amended, would be put to a vote.³³ All of the foregoing actions described in this paragraph were undertaken on behalf of Coop without the approval of Mr. Berkenbosch, in his prior role as SoP Administrator, which approval was required by Dutch law.

45. 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 Brazilian RJ Plan takes into account both the direct claim and the guarantee, neither the Coop Board nor Oi S.A. have provided Mr. Berkenbosch 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 to respond to Mr. Berkenbosch's other requests for information.

³² 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>.

³³ 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.'").

46. 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.³⁴

47. 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.³⁵

48. As described in greater detail in paragraphs 72-80 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).

B. The Netherlands

1) *Involuntary Petitions and the Silent Administration Period*

49. 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").

³⁴ See supra footnote 27.

³⁵ 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>.

50. 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.³⁶ In response to the application, on July 28, 2016, the Dutch Court appointed Mr. Berkenbosch 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 his capacity as the silent administrator, Mr. Berkenbosch used the period of silent administration to familiarize himself with Coop and the other Brazilian RJ Debtors by, among other methods, communicating with the Coop Board and its Dutch legal counsel.

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

51. 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 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

³⁶ 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.

restructuring plan for Coop.³⁷ 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.³⁸ 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."³⁹ 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."⁴⁰ This evidentiary presentation, aimed at establishing the gating items for a finding that Coop's COMI is 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.⁴¹

³⁷ See Suspension of Payments Proceeding Petition submitted with the Dutch Court on August 9, 2016 attached as Exhibit F to the Berkenbosch Declaration (the "SoP Petition"), §§ 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.").

³⁸ 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.")

³⁹ 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.").

⁴⁰ SoP Petition § 8.1.

⁴¹ See generally Brazilian Verified Petition.

52. 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*."⁴² 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*.⁴³

53. 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.⁴⁴

3) *Mr. Berkenbosch is Appointed as SoP Administrator*

54. In connection with granting the SoP Petition, the Dutch Court appointed Mr. Berkenbosch as the SoP Administrator. As SoP Administrator, Mr. Berkenbosch 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.⁴⁵ Among other things, Mr. Berkenbosch was responsible for supervising Coop's actions and taking appropriate measures if he deemed any act of Coop to be not in the best interest of its creditors.

⁴² Rechtbank Amsterdam 9 Augustus 2016, ECLI:NL:RBAMS:2017:645 (Neth.) (the "SoP Commencement Order"), p. 1 (emphasis added). A certified English translation of the SoP Commencement Order is attached as Exhibit G to the Berkenbosch Declaration.

⁴³ See, e.g., Shah Third Declaration.

⁴⁴ SoP Petition § 6.2.

⁴⁵ Dutch Insolvency Act §§ 215 & 228.

55. As SoP Administrator, Mr. Berkenbosch routinely communicated with various creditors, creditor groups and their advisors 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 his independent diligence and review, Mr. Berkenbosch understands that the International Bondholder Committee holds substantial percentages of the outstanding amounts of the Coop NY Notes and PTIF Notes.

56. Mr. Berkenbosch 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, Mr. Berkenbosch provided six (6) formal notices to Coop's creditors and published two publicly available reports, all of which are available on a website maintained by Mr. Berkenbosch in his capacities as first the SoP Administrator and now the Insolvency Trustee at <http://www.oibrasilholdingscoop-administration.com/> (the "Website").

57. Finally, Mr. Berkenbosch 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.⁴⁶ After numerous creditors

⁴⁶ See Shah Third Declaration. Subsequent to the filing of the Shah Third Declaration, certain creditors approached the SoP Administrator with questions and comments regarding the Shah Third Declaration, as a

contacted Mr. Berkenbosch regarding these statements and the Brazilian RJ Debtors declined his request to file a clarifying statement, Mr. Berkenbosch 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.⁴⁷ 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.

- 4) *Oi S.A. and the Coop Board Refuse to Provide Mr. Berkenbosch with Basic Diligence Materials and Frustrate the Exercise of his Duties as SoP Administrator*

58. As SoP Administrator, Mr. Berkenbosch supervised the actions of the Coop Board and had the authority to take appropriate measures if he deemed any act of the Coop Board not to be in the best interests of Coop's creditors.⁴⁸ Although the Coop Board remained in control of Coop during the pendency of the Suspension of Payments Proceeding, without the consent of the SoP Administrator, the Coop Board was prohibited from performing any acts of administration or disposal with regard to the Coop estate.⁴⁹ These acts include assuming obligations on behalf of the Coop estate and binding the Coop estate in any manner.

59. In an effort to fulfill his duties as SoP Administrator and evaluate Coop's restructuring options, Mr. Berkenbosch maintained extensive contact with Oi S.A. and the Coop

(continued...)

result of which the SoP Administrator concluded that certain statements made in the Shah Third Declaration were misunderstood by creditors.

⁴⁷ 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).

⁴⁸ Dutch Insolvency Act § 228.

⁴⁹ Id.

Board. Among other things, Mr. Berkenbosch 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.

60. During these discussions, it became apparent to Mr. Berkenbosch that Oi S.A. was determined to ignore the Suspension of Payments Proceeding and its obligations to the SoP Administrator whenever Oi S.A. determined Dutch law requirements might interfere with Oi S.A.'s objectives. Among other things, the Coop Board and Oi S.A. ignored Mr. Berkenbosch's 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 him with a meaningful opportunity to satisfy his fiduciary obligations. Through this course of action, Oi S.A. and the Coop Board made Mr. Berkenbosch's responsibility to review and consent impossible to discharge. Moreover, the Coop Board and Oi S.A. continued to submit filings on behalf of Coop, often without notifying Mr. Berkenbosch first or providing him 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 Mr. Berkenbosch's consent, as required by Dutch law.⁵⁰ Certain Coop NY Noteholders similarly expressed concern to Mr. Berkenbosch 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

⁵⁰ 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 Proceeding. See *infra* ¶¶ 65-69; see also Dutch Court of Appeals Decision § 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.").

done in the past. Other parties have expressed concerns that they are being excluded from the negotiations in Brazil as well.⁵¹

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

62. 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 Mr. Berkenbosch's consent). In a second notice to creditors dated September 8, 2016, Mr. Berkenbosch informed Coop's creditors that more time was necessary to study the Brazilian RJ Plan and that absent his consent the plan would not be binding on Coop's estate.⁵²

5) *Conversion of the Suspension of Payments
Proceeding to a Dutch Bankruptcy Proceeding*

63. On December 1, 2016, Mr. Berkenbosch, in his capacity as SoP Administrator, 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

⁵¹ *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).

⁵² 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.

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.

64. On February 2, 2017, the Dutch Court denied the conversion requests for both Coop and PTIF.⁵³ However, in its decision, the Dutch Court stressed that it was necessary for the Coop Board to cooperate with Mr. Berkenbosch, as the SoP Administrator, in order to bring the Suspension of Payments Proceeding to a favorable conclusion.⁵⁴ Certain members of the IBC Steering Committee appealed that decision while Mr. Berkenbosch renewed his efforts to work with the Coop Board and Oi S.A., as instructed by the Dutch Court. In the weeks that followed, Mr. Berkenbosch sent a letter to the Coop Board,⁵⁵ 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 needed to comply with his statutory duties. Unfortunately, as with his prior attempts to cooperate, his efforts were unavailing: no additional information was provided to Mr. Berkenbosch, the demands in his letter went unanswered and Oi S.A. continued to disregard Coop's creditors and Mr. Berkenbosch generally.

65. 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.⁵⁶ To oversee the Dutch Bankruptcy Proceeding for Coop, the Dutch Court of Appeals — the second highest court in the Netherlands

⁵³ A copy of a certified English translation of the Dutch Court's ruling on the conversion request is attached as Exhibit H to the Berkenbosch Declaration (the "Dutch Court Conversion Decision").

⁵⁴ Dutch Court Conversion Decision § 8.20.

⁵⁵ See Letter from Jasper Berkenbosch, as SoP Administrator, to the Coop Board, dated March 2, 2017, attached as Exhibit I to the Berkenbosch Declaration.

⁵⁶ Dutch Court of Appeals Decision §§ 4.12-4.13.

— appointed (a) Mr. Berkenbosch 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").⁵⁷

Immediately following his appointment, Mr. Berkenbosch sent the Coop Board a letter informing it of the Dutch Court of Appeals Decision, his appointment as the Insolvency Trustee for Coop, the corresponding impact under Dutch law and implications for the Coop Board.⁵⁸

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

67. *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.⁵⁹ Under Dutch law, final judgments with respect to a disputed legal issue will be binding on the same parties in a subsequent legal proceeding.⁶⁰ 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.⁶¹ As such, a fact or 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*.⁶²

⁵⁷ The Dutch Court of Appeals similarly appointed the PTIF Administrator as the trustee (curator) for PTIF (in such capacity, the "PTIF Insolvency Trustee").

⁵⁸ See Letter from Jasper Berkenbosch, as Insolvency Trustee, to the Coop Board, dated April 20, 2017, attached as Exhibit J to the Berkenbosch Declaration.

⁵⁹ Dutch Court of Appeals Decision § 4.15 (stating that "the centre of [Coop's] main interests is located in the Netherlands").

⁶⁰ Dutch Code of Civil Procedure, Art. 236.

⁶¹ Dutch Supreme Court, 18 September 1992, ECLI:NL:HR:1992:ZC0683, *NJ* 1992, 747).

⁶² See Opinion of the Advocate-General in Dutch Supreme Court 24 September 2004, ECLI:NL:PHR:2004:AP:6874, *NJ* 2006/200.

68. *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.⁶³

In its decision rejecting the appeal of the Dutch Court of Appeals Decision (as discussed in greater detail below in paragraph 72), the Dutch Supreme Court agreed with each of the foregoing points.

69. *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 prejudiced Coop's creditors. This fact alone supported an independent basis to convert the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding.⁶⁴

⁶³ Dutch Court of Appeals Decision §§ 3.7-3.8, 4.6, 4.9, 4.12 & 4.13.

⁶⁴ Id. § 4.5 (describing the transfer of approximately EUR 1.6 billion from Coop to Oi Móvel in early March 2016 as "highly suspicious").

70. 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.

6) *The Dutch Supreme Court Decision*

71. 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.⁶⁵ 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.⁶⁶ While the Advocate General's advisory opinions are 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.

72. On July 7, 2017, the Dutch Supreme Court issued its decision rejecting the appeal of the Dutch Court of Appeals Decision.⁶⁷ In doing so, the Dutch Supreme Court has ruled that the Dutch Bankruptcy Proceeding should remain in place with the Insolvency Trustee

⁶⁵ 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 the Berkenbosch 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).

⁶⁶ AG Opinion ¶ 4.15.

⁶⁷ Dutch Supreme Court 7 July 2017, ECLI:NL:HR:2017:1280 (the "Dutch Supreme Court Decision"). As stated in footnote 65 above, when the official English translation of the Dutch Supreme Court Decision becomes available, the Insolvency Trustee will file a supplement with this Court.

for Coop. 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.⁶⁸

C. **The Import of the Dutch Bankruptcy Proceeding**

73. 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.⁶⁹ In other words, the Dutch Court of Appeals Decision that appointed Mr. Berkenbosch as the Insolvency Trustee for Coop authorized him to act on Coop's behalf worldwide and without regard as to whether the laws of the local jurisdiction would otherwise prevent Mr. Berkenbosch from taking action in that territory.

74. Upon the commencement of the Dutch Bankruptcy Proceeding, Coop (and the Coop Board) lost any right to dispose of and control Coop's assets.⁷⁰ Instead, the Insolvency Trustee 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.⁷¹ Also, the Insolvency Trustee became empowered to preserve, collect and liquidate all of Coop's assets for distribution to creditors through the Dutch Bankruptcy Proceeding.⁷² In this respect, the role of the Insolvency Trustee is roughly equivalent to a trustee appointed in a United States bankruptcy proceeding.

⁶⁸ Dutch Supreme Court 7 July 2017, ECLI:NL:HR:2017:1281.

⁶⁹ See Dutch Supreme Court 15 April 1995, *NJ* 1955/542 (*Kallir/Comfin*).

⁷⁰ Dutch Insolvency Act § 23.

⁷¹ Id. §§ 23, 25 & 68.

⁷² Id. § 68; see also Decision of Mr. W.F. Korthals Altes, Senior Judge of the Amsterdam District Court, in his Capacity as Supervisory Judge in the Bankruptcy of Oi Brasil Holdings Coöperatief U.A., dated June 1, 2017, attached as Exhibit D to the Berkenbosch Declaration (the "Dutch SJ Injunction Decision") ¶ 2.

75. 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.⁷³ 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.

IV. RECENT DEVELOPMENTS

A. The Brazilian RJ Proceeding and the Brazilian Injunction

76. 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 the Insolvency Trustee. To the contrary, Oi S.A. continues to undermine the ability of the Insolvency Trustee to discharge his 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 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).⁷⁴

⁷³ See, e.g., SoP Petition § 6.1.

⁷⁴ 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.

77. 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 the Insolvency Trustee from taking any actions on behalf of Coop and threatens the imposition of fines against the Insolvency Trustee for any breaches (the "Brazilian Injunction").

78. 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).⁷⁵ To date, the Dutch Supervisory Judge has not received a response from the Brazilian RJ Judge.

79. On May 12, 2017, the Brazilian RJ Court granted Oi S.A.'s request and issued the Brazilian Injunction.⁷⁶ Among other things, the Brazilian Injunction purports to (a) limit the ability of the Insolvency Trustee to act in accordance with his 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 already been dispossessed of all such authority and control as a matter of Dutch law in a fully contested proceeding between the affected parties.⁷⁷

⁷⁵ See Letter from the Dutch Supervisory Judge to Judge Fernando C.F. Viana, dated May 9, 2017, attached as Exhibit K to the Berkenbosch Declaration. 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.

⁷⁶ See Brazilian Injunction, attached as Exhibit L to the Berkenbosch Declaration.

⁷⁷ See Dutch SJ Injunction Decision ¶ 5; Dutch SJ Chapter 15 Decision ¶ 4.

80. On June 7, 2017, the Insolvency Trustee, with the express authorization of the Dutch Supervisory Judge, 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.⁷⁸

81. On June 13, 2017, the Brazilian Court of Appeals denied the stay request.⁷⁹ 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 effect with respect to actions taken within the applicable jurisdiction.⁸⁰ 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."⁸¹

82. 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.⁸² In particular, the Dutch Supervisory Judge has stated that the Brazilian Injunction runs contrary to Dutch law and international standards of comity:

⁷⁸ Id. ¶ 7.

⁷⁹ 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, attached as Exhibit M to the Berkenbosch Declaration.

⁸⁰ Id. at 6.

⁸¹ 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, attached as Exhibit N to the Berkenbosch Declaration.

⁸² See Dutch SJ Injunction Decision ¶ 5 ("Due to the absence of a treaty, the Brazilian [Injunction] lacks direct effect in The Netherlands and cannot be enforced in The Netherlands"); Dutch SJ Chapter 15 Decision ¶ 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.⁸³

83. 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.

B. The Dutch Supervisory Judge Authorizes the Insolvency Trustee to File this Chapter 15 Proceeding and Obtain Financing

84. On July 5, 2017, the Dutch Supervisory Judge approved the Insolvency Trustee's request to commence this chapter 15 proceeding.⁸⁴ In approving the request, the Dutch Supervisory Judge again reiterated that Coop's COMI is located in the Netherlands, and that (i) the Insolvency Trustee has the 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) the Insolvency Trustee is authorized to file the Voluntary Petition as necessary to protect the interests of Coop's creditors.⁸⁵

85. Prior to filing this Verified Petition and Motion, the Insolvency Trustee, with the permission of the Dutch Supervisory Judge, obtained financing in the form of a \$5 million loan provided by the IBC Steering Committee (the "Coop Financing").⁸⁶ The Coop Financing is currently structured as an unsecured facility that the Insolvency Trustee may use in

⁸³ Dutch SJ Injunction Decision ¶ 5.

⁸⁴ See Dutch SJ Chapter 15 Decision ¶ 10.

⁸⁵ Id.

⁸⁶ The Insolvency Trustee anticipates filing a motion with this Court for recognition and enforcement of the Supervisory Judge's order authorizing the Insolvency Trustee to obtain the Coop Financing on behalf of Coop.

its sole discretion, payable from the proceeds of any recoveries on account of the Potential Causes of Action and has priority status in the Dutch Bankruptcy Proceeding. The structure and amount of the Coop Financing is further evidence that the Insolvency Trustee has the support of Coop's substantial creditor constituencies.⁸⁷

JURISDICTION, ELIGIBILITY AND VENUE

86. This Court has jurisdiction to hear and determine cases commenced under the Bankruptcy Code and all core proceedings arising thereunder pursuant to 28 U.S.C. §§ 157, and 1334, as well as the Amended Standing Order of Reference, dated January 31, 2012, Reference M-431, In re Standing Order of Reference Re: Title 11, 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.) (the "Amended Standing Order"). A case under chapter 15 is a "case" under the Bankruptcy Code. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code have been designated as core proceedings. 28 U.S.C. § 157(b)(2)(P) ("Core proceedings include, but are not limited to. . . recognition of foreign proceedings and other matters under chapter 15 of title 11.").

87. Coop is a debtor eligible for relief under chapter 15 of the Bankruptcy Code. Section 109(a) of the Bankruptcy Code provides, in part, that "only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title." 11 U.S.C. § 109(a). The requirements set forth in section 109(a) of the Bankruptcy Code are applicable to chapter 15 cases. See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet), 737 F.3d 238, 247 (2d Cir. 2013). Coop satisfies the local property requirement of section 109(a) of the Bankruptcy Code because it has property in the United

⁸⁷ The description of the Coop Financing contained in this paragraph is qualified in its entirety by the actual terms of the Coop Financing. The Insolvency Trustee intends 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.

States consisting of (a) tangible assets consisting of cash in bank accounts and (b) intangible contract rights arising under the Coop NY Notes.

88. Coop's funds held in client trust accounts at Citibank (New York) are sufficient to satisfy the section 109(a) requirement. See In re Suntech Power Holdings Co., 520 B.R. 399, 411 (Bankr. S.D.N.Y. 2014); In re Octaviar Admin. Pty Ltd., 511 B.R. 361, 372 (Bankr. S.D.N.Y. 2014) (holding cash in client trust account maintained by the foreign representative's U.S. counsel satisfied section 109(a) of the Bankruptcy Code). Further, Coop's contract rights under the Coop NY Notes constitute intangible property in the United States that is sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code. See In re Inversora Eléctrica de Buenos Aires S.A., 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (stating that New York law-governed debt containing a New York forum selection clause whether considered alone or together with other United States property provides a sufficient basis for jurisdiction and venue in New York); In re Berau Capital Res. Pte Ltd., 540 B.R. 80, 82-83 (Bankr. S.D.N.Y. 2015). The Coop NY Notes Indentures are governed by New York law, include a New York forum selection clause and require the appointment of an agent for service of process in New York. In addition, the indenture trustee, registrar and transfer agent for both series of Coop NY Notes is BONY, a New York banking corporation, and the Coop NY Notes Indentures require that numerous acts be performed by BONY as set forth in paragraph 18 above. Based on the foregoing, the existence of the Coop NY Notes provides another basis for Coop's eligibility for relief under chapter 15. See Berau, 540 at 82-84 (finding basis for eligibility when notes indenture was governed by New York law, included New York choice of forum clause, appointed an authorized agent of service of process in New York and directed the indenture trustee to perform numerous acts in connection with the notes in New York).

89. Finally, venue is proper in this District. Section 1410 of title 28 of the United States Code provides as follows:

A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.

28 U.S.C. § 1410.

90. Venue in this District is proper because Coop's principal assets in the United States are funds held in client trust accounts at Citibank (New York), which is located in New York County and thus within this District. Also, venue in this District is consistent with the interests of justice and the convenience of the parties. 28 U.S.C. § 1410(3). Coop was already a participant in the Brazilian Chapter 15 Proceeding in this District and Coop's creditors have been on notice for approximately one (1) year of the Brazilian Chapter 15 Proceeding. Moreover, certain large holders of the Coop NY Notes appear to be institutional investors that are located, or conduct significant business, in New York. Finally, the other Brazilian RJ Debtors have already taken advantage of the jurisdiction of the courts in this District and are party to the Brazilian Chapter 15 Proceeding. As such, the other Brazilian RJ Debtors should be able to participate in the Dutch Chapter 15 Proceeding to the extent necessary.

91. Accordingly, for the foregoing reasons, the Court has jurisdiction over Coop in this proceeding, Coop is eligible for relief under chapter 15 of the Bankruptcy Code and venue of this proceeding in this District is appropriate.

REQUESTED RELIEF

92. The Insolvency Trustee requests that the Court enter the Proposed Order (a) modifying the Court's Prior Recognition Order to (i) terminate recognition of the Brazilian RJ Proceeding for Coop and the Oi Foreign Representative, or, in the alternative, (ii) recognize the Brazilian RJ Proceeding as the foreign nonmain proceeding for Coop, terminate the Oi Foreign Representative and appoint the Insolvency Trustee as the Foreign Representative of Coop in that proceeding; (b) granting recognition of the Dutch Bankruptcy Proceeding as the foreign main proceeding with respect to Coop; (c) recognizing the Insolvency Trustee as the Foreign Representative of Coop in the Dutch Chapter 15 Proceeding; (d) modifying the Court's Prior Joint Administration Order; and (e) granting such other and further relief as the Court may deem just and proper.

93. In addition, the Insolvency Trustee requests that the Proposed Order contain the following relief available to a foreign representative upon recognition of a foreign proceeding under chapter 15 of the Bankruptcy Code:

- to the extent not otherwise stayed or suspended pursuant to section 1520 of the Bankruptcy Code, the stay and/or suspension of the following actions taken by any person or entity in the United States (a) the commencement or continuation of an individual action or proceeding concerning Coop's assets, rights, obligations or liabilities; (b) execution against Coop's assets; and (c) attempts to transfer, encumber or otherwise dispose of any of Coop's assets (11 U.S.C. § 1521(a)(1)-(3));
- recognition of the Insolvency Trustee, as the exclusive representative for Coop in the United States, with the sole power to administer and distribute all of Coop's assets within or being monetized in the territorial jurisdiction of the United States (11 U.S.C. § 1521(b));

- enforcement of all valid orders of the Dutch Supervisory Judge, the Dutch Court, the Dutch Court of Appeals and the Dutch Supreme Court, as applicable, in effect as of the date hereof;
- preservation of the Insolvency Trustee's right to seek further relief under section 1521 of the Bankruptcy Code; and
- grant of such other and further relief the Court may deem just and proper.

BASIS FOR REQUESTED RELIEF

I. THE COURT HAS THE AUTHORITY TO TERMINATE OR MODIFY ITS PRIOR ORDERS AND SHOULD DO SO HERE

94. There is no longer any need for recognition of the Brazilian RJ Proceeding with respect to Coop under chapter 15 of the Bankruptcy Code, and, correspondingly, the joint administration of Coop's case with that of the other Brazilian RJ Debtors because nothing approved with respect to Coop in Brazil will be definitive or effective absent approval in the Netherlands. The only plan that can be effective for Coop in the Netherlands is a plan proposed in the Netherlands and voted on by creditors in accordance with Dutch law. Similarly, the only plan that can be recognized for Coop and effective in the United States is a plan that was proposed and approved for Coop in the Netherlands. Continued recognition of the Brazilian RJ Proceeding as the foreign main proceeding for Coop is not only inconsistent with applicable Dutch law governing Coop's restructuring process but also increases the risk that Oi S.A., the Coop Board or the Oi Foreign Representative may attempt to take actions in the United States with respect to Coop that violate Dutch law and are contrary to the interests of Coop's estate (including its substantial claims against Oi S.A. and Oi Movel) and Coop's creditors. Although the Coop Board is no longer authorized to act on behalf of the Coop estate, the Insolvency Trustee remains prepared to cooperate with the Coop Board and Oi S.A. on the terms of a global, consensual restructuring that includes Coop as long as Dutch laws and regulations, as well as the interests of Coop and its creditors, are respected.

A. **Applicable Law**

95. Section 1517(d) of the Bankruptcy Code permits "modification or termination of recognition" after considering the "possible prejudice to parties" that relied on the recognition order. 11 U.S.C. § 1517(d); see In re Loy, 448 B.R. 420, 438-39 (Bankr. E.D. Va. 2011) (finding that bankruptcy courts are permitted under 11 U.S.C. § 1517(d) to modify or terminate recognition of foreign insolvency proceedings under certain conditions; although revisiting a recognition determination is not mandatory, it is within court's discretion to do so). In addition, the Prior Recognition Order specifically provided that this Court retained jurisdiction to modify it.⁸⁸

96. "A court may modify or terminate recognition if (1) the grounds for granting recognition were fully or partially lacking or (2) the grounds for granting recognition have ceased to exist." Loy, 448 B.R. at 439-40. "[E]ither prong, resting alone, is sufficient to enable the court to modify or terminate recognition. In order to modify or terminate recognition, the reviewing court that evaluates the presence or absence of either one of those prongs may consider new evidence and it is not limited to considering only the evidence that was or ought to have been available at the time the court granted recognition." Id.

97. Further, over time, the circumstances affecting recognition may change.⁸⁹ "Section 1517(d) authorizes the court to modify or terminate recognition based on changed circumstances. [This] provision[] exhibit[s] a policy that the recognition process remain flexible,

⁸⁸ Prior Recognition Order ¶ 9.

⁸⁹ See UNCITRAL ¶ 165 ("Modification or termination of the recognition decision may be a consequence of a change of circumstances after the decision on recognition, for instance, if the recognized foreign proceeding has been terminated or its nature has changed (e.g. a reorganization proceeding might be converted into a liquidation proceeding) or if the status of the foreign representative's appointment has changed or the appointment has been terminated.").

taking into account the actual facts relevant to the court's decision rather than setting an arbitrary determination point." British Am. Ins., 425 B.R. at 910.

98. Modification of a recognition order is also appropriate pursuant to section 1522(c) of the Bankruptcy Code, which provides that "[t]he court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief." 11 U.S.C. § 1522(c). "The plain language of the statute affords courts flexibility in granting or modifying relief by allowing courts to modify relief either on its own motion or upon request." In re Sanjel (USA) Inc., No. 16-50778-CAG, 2016 Bankr. LEXIS 2771, at *13 (Bankr. W.D. Tex. July 28, 2016) (granting motion seeking modification of court's recognition order to allow the movants to pursue discovery in connection with potential claims).

99. The court may modify or terminate relief under section 1522(c) if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected. 11 U.S.C. § 1522(a). To assess whether interests of creditors are sufficiently protected courts have engaged in a balancing of the relative hardships to the parties. Sanjel, 2016 Bankr. LEXIS 2771, at *16.

B. The Court Should Terminate its Recognition of the Brazilian RJ Proceeding and the Oi Foreign Representative

100. Balancing the relative hardships to the parties weighs in favor of terminating recognition. Other than recognition of the Brazilian RJ Proceeding for Coop and the imposition of the relief provided by section 1520 of the Bankruptcy Code, to date no further material actions have taken place in the United States with respect to Coop. Because a stay will continue in effect upon recognition of the Dutch Bankruptcy Proceeding, there is no prejudice to parties in interest that may have relied on the Prior Recognition Order. Finally, any restructuring

plan for Coop must be approved in the Netherlands, and Oi S.A. and the Coop Board already acknowledged the need to obtain such approval. See SoP Petition § 6.1 (In order to ensure that the restructuring of the indebtedness as contemplated by the [Brazilian] RJ Plan, to the extent it concerns [Coop], will be recognized and bind creditors in relation to the assets and liabilities of [Coop] in the Netherlands (and in other European member states), [Coop] has submitted, together with this petition, a draft composition plan."). Accordingly, there is little harm in terminating recognition of the Brazilian RJ Proceeding as to Coop since it was always contemplated that the restructuring plan for Coop would need to be approved in the Netherlands before it can be effective.

101. Mr. Berkenbosch is currently the *only* person or entity with control over the assets and liabilities of Coop. When the Dutch Court of Appeals issued its decision converting the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding it appointed Mr. Berkenbosch as the Insolvency Trustee with worldwide powers to administer Coop and its estate. This determination was confirmed by the Dutch Supreme Court and is now final and not subject to any further appeals. In light of the foregoing, the prior representative appointed by this Court — the Oi Foreign Representative — cannot serve as the foreign representative for Coop in this chapter 15 proceeding.

102. Moreover, by operation of Dutch law, the powers of attorney appointing the Oi Foreign Representative to such role were revoked when Coop was declared bankrupt by the Dutch Court of Appeals. See Dutch Civil Code § 3:72(a). This outcome was confirmed by the Dutch Supervisory Judge. See Dutch SJ Injunction Decision ¶ 3 ("Any powers of attorney granted by the [Coop Board] have been terminated by operation of law."); Dutch SJ Chapter 15

Decision ¶ 3 (same).⁹⁰ As such, the Oi Foreign Representative lacks the necessary authority to continue in its prior role as the foreign representative for Coop. See, e.g., In re Vitro S.A.B. de CV, 701 F.3d 1031, 1049 (5th Cir. 2012) ("[section] 101(24) requires that a foreign representative have the authority 'to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.'" (quoting 11 U.S.C. § 101(24))).

103. Therefore, the Court should modify the Prior Recognition Order to terminate its recognition of the Brazilian RJ Proceeding with respect to Coop and terminate its recognition of the Oi Foreign Representative as the foreign representative for Coop.

C. **The Court Should Modify its Prior Joint Administration Order**

104. Assuming the Court grants the other relief requested in this Verified Petition and Motion, the Insolvency Trustee also respectfully requests that the Court modify the Joint Administration Order to remove Coop from the jointly administered cases of the other Brazilian RJ Debtors. Coop is now subject to separate and distinct insolvency proceedings in the Netherlands, and the Oi Foreign Representative has no authority to take any actions or file any pleadings on behalf of Coop. Accordingly, maintaining joint administration of Coop's Dutch Chapter 15 Proceeding is no longer necessary or appropriate.

⁹⁰ Indeed, the Brazilian RJ Chapter 15 Proceeding with regards to Coop no longer satisfies the requirement of section 1517 of the Bankruptcy Code that "the foreign representative applying for recognition is a person or body." 11 U.S.C. § 1517(a)(2). The Oi Foreign Representative is no longer authorized to "act as a representative of such foreign proceeding" and the Coop Board is no longer "authorized in a foreign proceeding to administer the reorganization or liquidation of the debtor's assets or affairs." 11 U.S.C. § 101(24). As such, the termination of recognition of Mr. Shah as the Oi Foreign Representative for Coop is necessary because one of the grounds for granting such recognition has "ceased to exist." 11 U.S.C. § 1517(d).

**II. THE COURT SHOULD ENTER AN ORDER RECOGNIZING THE DUTCH
BANKRUPTCY PROCEEDING AS COOP'S FOREIGN MAIN PROCEEDING
AND APPROVE THE OTHER REQUESTED RELIEF**

105. All of the statutory prerequisites for recognition of the Dutch Bankruptcy Proceeding as a foreign main proceeding for Coop have been satisfied. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, a court shall enter an order recognizing a foreign proceeding if "(1) such foreign proceeding for which recognition is sought is a foreign main proceeding . . . within the meaning of section 1502 [of the Bankruptcy Code], (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515 [of the Bankruptcy Code.]" See 11 U.S.C. § 1517(a). As set forth below, the Voluntary Petition (together with the exhibits thereto) along with the facts set forth in this Verified Petition and Motion and confirmed by the Berkenbosch Declaration satisfy each of the foregoing statutory requirements.

A. The Dutch Bankruptcy Proceeding is the Foreign Main Proceeding

1) *The Dutch Bankruptcy Proceeding is a "Foreign Proceeding"*

106. Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as (a) a collective judicial or administrative proceeding relating to insolvency or adjustment of debt, (b) pending in a foreign country, (c) under the supervision of a foreign court and (d) for the purpose of reorganizing or liquidating the assets and affairs of the debtor. See 11 U.S.C. § 101(23). Generally, "a foreign proceeding is a foreign judicial or administrative process whose end it is to liquidate the foreign estate, adjust its debts or effectuate its reorganization." In re Bd. of Dirs. of Hopewell Int'l Ins. Ltd., 238 B.R. 25, 49 (Bankr. S.D.N.Y. 1999) (citations omitted).

107. The Dutch Bankruptcy Proceeding is a proceeding pending in the Netherlands before the Dutch Court, which is aimed at either the liquidation of Coop's assets or reorganization via approval of a composition plan by the Dutch Court and Coop's creditors in

accordance with Dutch law.⁹¹ Thus, the Dutch Bankruptcy Proceeding, by its nature, falls within the definition of a "foreign proceeding" under section 101(23) of the Bankruptcy Code. This Court has previously concluded that a bankruptcy proceeding pursuant to the Dutch Insolvency Act is a "foreign proceeding" as defined in the Bankruptcy Code. See Order Granting Verified Petition for Recognition Under Chapter 15 and for Additional Relief Under 11 U.S.C. § 1521, at 2, In re Upper Deck Int'l B.V., No. 12-14294 (Bankr. S.D.N.Y. Nov. 20, 2012) [ECF No. 12] ("Upper Deck Recognition Order") (holding that a Dutch insolvency proceeding was "a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code").

2) *The Dutch Bankruptcy Proceeding is the Foreign Main Proceeding*

108. Courts will recognize a foreign proceeding as a "foreign main proceeding" if it is "pending in the country where the debtor has the *center of its main interests*." 11 U.S.C. § 1517(b)(1) (emphasis added). There are two important issues embedded in this analysis: (a) the time at which COMI should be determined and (b) the relevant factors for determining COMI. Each of these issues is addressed in turn below.

a. Coop's COMI Should be Determined as of the Date of the Insolvency Trustee's Filing of the Voluntary Petition

109. The Second Circuit Court of Appeals has held that COMI should be determined at the time a chapter 15 petition is filed. Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 133 (2d Cir. 2013) ("[A] debtor's COMI is determined as of the time of the filing of the Chapter 15 petition."); see also Suntech Power Holdings, 520 B.R. at 419 (analyzing the foreign debtor's COMI "on the date of the commencement of the chapter 15 case").

⁹¹ See supra ¶¶ 73-75.

110. Using the date of the filing of the chapter 15 petition by a fiduciary appointed to oversee a debtor's insolvency proceeding is appropriate because COMI may "become lodged with the foreign representative" if all of the primary business activities of a debtor take place in the foreign representative's location. In re Fairfield Sentry Ltd., 440 B.R. 60, 65 (Bankr. S.D.N.Y. 2010) (quoting In re British Am. Ins. Co. Ltd., 425 B.R. 884, 914 (Bankr. S.D. Fla. 2010)), aff'd, In re Fairfield Sentry Ltd., No. 10 Civ. 7311(GBD), 2011 WL 4357421, at *2, *7 (S.D.N.Y. Sept. 15, 2011), aff'd sub nom. Fairfield Sentry, 714 F.3d 127; Suntech Power Holdings, 520 B.R. at 417-20 (stating that commencement of a liquidation proceeding may "shift the duties and responsibilities of running the business from the debtor's management" to the fiduciary appointed in the foreign proceeding and consequently have the effect of shifting COMI as of the date of the chapter 15 filing to the place where the proceeding is pending). Moreover, "[s]electing the latest possible date for the COMI analysis is consistent with the aim of international uniformity." In re British Am. Ins. Co., 425 B.R. at 910 (holding that if the location of a debtor's COMI changes between the date a chapter 15 petition is filed and the date a court makes a determination on recognition, the court may look to the facts on the latter date for purposes of COMI).

111. The Court should look to changes in circumstances that have occurred since its entry of the Prior Recognition Order, including (a) the Dutch Court and the Dutch Court of Appeals each finding on a final basis that Coop's COMI is in the Netherlands, which was not contested by Oi S.A., Coop or the Coop Board and is therefore now res judicata, (b) the appointment of the Insolvency Trustee for Coop in connection with the conversion of the Suspension of Payments Proceeding to the Dutch Bankruptcy Proceeding — an action prompted by the misconduct of Oi S.A. and the Coop Board, (c) the Insolvency Trustee's investigation of

the Potential Causes of Action and the institution of legal proceedings to pursue such causes of action and (d) the Insolvency Trustee's filing of the Voluntary Petition for Coop on July 7, 2017.

112. Nevertheless, even if the Court were to decide that Coop's COMI should be measured as of the date of commencement of the Brazilian Chapter 15 Proceeding (which the Insolvency Trustee contends would be inappropriate on the basis that recognition of the Brazilian RJ Proceeding should be terminated with respect to Coop), the Court should still conclude that Coop's COMI is in the Netherlands given the important facts that were not disclosed to this Court in connection with its entry of the Prior Recognition Order.

b. Coop's COMI is in the Netherlands

(1) *Coop's COMI Has Been Determined to be in the Netherlands on a Final, Irrevocable Basis by Dutch Courts*

113. As a threshold matter, the Dutch Court has already determined that Coop's COMI is in the Netherlands following a fully contested proceeding involving Coop and the Insolvency Trustee. This Court should respect and give effect to that finding.

114. "The doctrine of collateral estoppel, or issue preclusion, bars a party from relitigating in a second proceeding an issue of fact or law that was litigated and actually decided in a prior proceeding, if that party had a full and fair opportunity to litigate the issue in the prior proceeding and the decision of the issue was necessary to support a valid and final judgment on the merits." Metromedia Co. v. Fugazy, 983 F.2d 350, 365 (2d Cir. 1992). "It is well established that federal law on collateral estoppel applies to determine the preclusive effect of a prior federal judgment." Purdy v. Zeldes, 337 F.3d 253, 258 & n.5 (2d Cir. 2003). Under federal law, collateral estoppel "applies when: '(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to

support a valid and final judgment on the merits.'" Marvel Characters, Inc. v. Simon, 310 F.3d 280, 288-89 (2d Cir. 2002) (quoting Boguslavsky v. Kaplan, 159 F.3d 715, 720 (2d Cir. 1998)).

115. Here, since this Court last considered this issue, courts in the Netherlands have entered orders or rendered decisions finding that Coop's COMI is in the Netherlands. First, the Dutch Court found Coop's COMI is in the Netherlands, which finding was based, in part, on statements made by Coop (when it was controlled by its board and Oi S.A.) in the SoP Petition filed with the Dutch Court. The finding that the COMI is in the Netherlands was necessary under applicable EU regulations in order for the Dutch Court to grant Coop relief under the Dutch Insolvency Act.⁹² Second, more recently, the Dutch Court of Appeals independently found that Coop's COMI is in the Netherlands, which finding was made following a fully contested proceeding involving Oi S.A., Coop and the Insolvency Trustee.⁹³ The Dutch Court of Appeals Decision is a final, irrevocable judgment as to the location of Coop's COMI reached after a fully contested proceeding involving all affected parties. Accordingly, this Court should adopt the findings of the Dutch courts and likewise rule that Coop's COMI is in the Netherlands. To hold otherwise would give parties that had a full and fair opportunity to litigate the COMI issue in the Netherlands (but did not do so, as they wanted to avail themselves of the relief provided by Dutch law) the proverbial "second bite at the apple."

⁹² 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.").

⁹³ Dutch Court of Appeals Decision at § 4.15 (stating that "the centre of [Coop's] main interests is located in the Netherlands").

116. Similarly, "principles of judicial estoppel and comity" bar parties from raising arguments inconsistent with positions previously taken before other courts. In re OAS S.A., 533 B.R. 83, 96-97 (Bankr. S.D.N.Y. 2015) (holding that creditors were precluded from arguing that the debtors' management was not in control where under identical facts the creditors had successfully argued for the appointment of provisional liquidators in a British Virgin Islands proceeding); see also Intellivision v. Microsoft Corp., 484 Fed. Appx. 616, 619 (2d Cir. 2012) (explaining that judicial estoppel prohibits "parties from deliberately changing positions according to the exigencies of the moment") (quoting New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001)).

117. In re OAS S.A., in a similar circumstance, this Court held that parties were precluded from "making [a] contrary argument because it is inconsistent with the position they successfully took before [the foreign court.]" In re OAS S.A., 533 B.R. 83, 96 (Bankr. S.D.N.Y. 2015) (citing Adroque Chico S.A. v. FleetBoston Fin. Corp., 427 Fed. Appx. 43, 45 (2d Cir. 2011)). In OAS, certain creditors of the foreign debtors seeking chapter 15 recognition challenged whether the management of the foreign debtors retained sufficient control over the debtors' business to qualify as "debtors-in-possession within the meaning of the [UNCITRAL] Model Law." Id. The foreign debtors were subject to insolvency proceedings in Brazil and the British Virgin Islands ("BVI"). In successfully arguing for the appointment of provisional liquidators in a BVI proceeding for another subsidiary of the foreign debtors, the creditors had argued that the foreign debtors' existing management retained control over that debtor pursuant to Brazilian law, and this control necessitated the appointment of provisional liquidators. Id. Before the bankruptcy court, however, the creditors argued the contrary position for another debtor — namely that management of the debtors were not in control. This Court held that

"principles of judicial estoppel and comity preclude [the creditors] from arguing to this Court that the powers of the [foreign debtors'] management are so minimal . . . that [the foreign debtor] does not operate as a debtor-in-possession because it lacks control of its business and assets." *Id.* at 97. The principle applies with equal force here: having sought and obtained protection in the Netherlands by seeking commencement of the Suspension of Payments Proceeding and making representations to establish that Coop's COMI is in the Netherlands, Oi S.A. and the Coop Board should not be permitted to maintain a contrary position before this Court.

118. For these reasons, this Court should find — as the Dutch courts have — that Coop's COMI is in the Netherlands, and Oi S.A. and the Coop Board should be estopped from arguing to the contrary.

(2) *Upon Consideration of all of the Factors, the Court Should Find that Coop's COMI is in the Netherlands*

119. Even if the Court considers that it is not bound to follow the decision of the Dutch Courts pursuant to principles of res judicata and estoppel and/or is prepared to allow the same parties to re-litigate that issue again here, it should nevertheless find that Coop's COMI is in the Netherlands after an independent consideration of all relevant factors.

120. The Bankruptcy Code does not define COMI, but contains a statutory presumption that, in the absence of evidence to the contrary, the country of the debtor's registered office is presumed to be the COMI jurisdiction. 11 U.S.C. § 1516(c). In this case, Coop's registered office is in the Netherlands, and there is therefore a statutory presumption that Coop's COMI is in the Netherlands.

121. To rebut this statutory presumption, courts generally look at various factors, including the following:

- the location of the debtor's headquarters;
- the location of those who actually manage the debtor;
- the location of the debtor's primary assets;
- the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and
- the jurisdiction whose law would apply to most disputes.

Fairfield Sentry, 714 F.3d at 137 (quoting In re SPhinX, Ltd., 351 B.R. 103, 117 (Bankr. S.D.N.Y. 2006)). Generally, factors that a court may consider in this analysis are not limited, and may include "[a]ny relevant activities, including liquidation activities and administrative functions." Id. at 137.

122. Analysis of the applicable COMI factors in this case overwhelmingly supports a finding that Coop's COMI is in the Netherlands. Coop is a Dutch entity with its registered office located in the Netherlands and has taken actions to maintain its corporate existence in the Netherlands.⁹⁴ While its sole member is based in Brazil, management of Coop's affairs takes place from its headquarters in the Netherlands. Mr. Berkenbosch, who has exclusive control over Coop, is a Dutch citizen and resides in the Netherlands. Coop's books and records were, and continue to be, located in the Netherlands and Coop has retained professionals in the Netherlands. Before the Conversion Date, Coop's employees and at least one director resided in the Netherlands at all times. Coop's primary assets are also in the Netherlands, consisting of cash held in a bank account in the Netherlands, the Tax Claim against Dutch tax authorities and the Potential Causes of Action.

⁹⁴ Among other things, Coop (a) has always filed tax returns with the Dutch tax authorities and audited financial statements with the Dutch Chamber of Commerce, (b) continues to maintain all of its books and records in the Netherlands, and (c) otherwise complies with requirements of maintaining corporate existence in the Netherlands.

123. PTIF, Coop's largest creditor owed billions of Euros, is a Dutch entity — a fact not disclosed to this Court in connection with the Brazilian Chapter 15 Proceeding. In fact, the vast majority (if not all) of Coop's creditors are located outside of Brazil. Coop engaged in significant financial transactions with PTIF, principally in connection with the divestiture of the telecommunications business in Portugal. The majority of the funds lent to Oi S.A. and Oi Móvel originate from the European market as PTIF (a) issued its bonds in Europe before it was acquired by Oi S.A. and its affiliates, and (b) the cash that Coop received from PTIF and subsequently transferred to Oi S.A. were the proceeds of the sale of a Portuguese company. As such, holders of the PTIF Notes would clearly have expected to recover from PTIF's assets in a Dutch proceeding, rather than have their recovery governed by a consolidated restructuring in Brazil (especially not one that completely ignores Coop Loan Claims).⁹⁵

124. Collectively, the foregoing facts establish that, even before the commencement of insolvency proceedings in Brazil or the Netherlands, Coop's creditors were clearly aware that Coop's COMI was in the Netherlands and would therefore expect any restructuring to be effected there. See, e.g., Suntech Power Holdings, 520 B.R. at 418 (finding the lack of evidence to support a finding that a debtor's creditors would have expected the business to be restructured in China to be a contributing factor to the court's determination that COMI was located in the Cayman Islands instead of China); In re Gerova Fin. Grp., Ltd., 482 B.R. 86, 91-92 (Bankr. S.D.N.Y. 2012) (finding that because Bermuda was the situs of the debtor's registered office, the location of its only known physical office, the location of its only known employee, the place of at least some of its board members and meetings, the location of

⁹⁵ See UNCITRAL ¶ 148, n.33 (implying that COMI shifting may be intended to "thwart the legitimate expectations of creditors and third parties.").

its corporate books and records and the place where litigation adversaries served or attempted to serve process, investors were clearly informed that the debtor's principal situs was in Bermuda).

125. Notwithstanding the fact that this Court has previously found that Coop's COMI is in Brazil⁹⁶ — a finding that the Insolvency Trustee disputes due to information having been concealed from this Court — certain intervening events have occurred subsequent thereto that have clearly confirmed Coop's COMI is in the Netherlands.

126. *First*, since the Conversion Date, the Coop estate (including the Coop Loan Claims, the Potential Causes of Action and the Tax Claim, among other things) is under the sole and exclusive control of the Insolvency Trustee in the Netherlands and not the Coop Board. Even prior to the Conversion Date, during the Suspension of Payments Proceeding, the Coop Board could not administer Coop's assets or liabilities without the consent of the Insolvency Trustee. Accordingly, even if it was controlled from Brazil by its dominant member, Oi S.A., the management of Coop remained, and with the appointment of the Insolvency Trustee and his activities continues to be centered, in the Netherlands. See, e.g., Fairfield Sentry, 440 B.R. at 65 (noting a prior holding that "the debtor's COMI may become lodged with the foreign representative . . . where, by necessity and in good faith, a foreign representative relocates all of the primary business activities of the debtor to his location (or brings business to a halt), thereby causing other parties to look to the judicial manager as the location of [the] debtor's business") (internal citations omitted); Suntech Power Holdings, 520 B.R. at 417 (holding that because the order appointing the liquidator vested him with broad management of the debtor's business and operations, and allowed the liquidator to assume control of the debtor's assets, liabilities and

⁹⁶ See Prior Recognition Order.

legal proceedings involving the debtor, and dispossessed the board of ability to take any action without the liquidator's approval, COMI was lodged with the liquidator).

127. Moreover, since the commencement of the Suspension of Payments Proceeding almost one year ago, Mr. Berkenbosch has been undertaking restructuring activities on behalf of Coop in the Netherlands (including attempted negotiations with respect to the Brazilian RJ Plan), has been investigating and bringing claims on behalf of Coop, and has been communicating with creditors, including the PTIF Insolvency Trustee and the International Bondholder Committee and other bondholder groups, regarding the status of Coop's restructuring, including via various notices and reports posted on the Website. See, e.g., Fairfield Sentry, 2011 WL 4357421, at *2, *7 (finding that the fact that the debtor's counterparties were dealing exclusively with the liquidators as representatives of the debtor since the commencement of the liquidation proceeding weighed in favor of concluding that COMI was located in the country where the liquidation proceeding was pending). Many of these creditors have expressed support for the Insolvency Trustee's actions, including his pursuit of the Potential Causes of Action, the Tax Claim and the filing of this Verified Petition and Motion. Indeed, the IBC Steering Committee has agreed to provide the Coop Financing consisting of a \$5 million new-money loan.

128. *Second*, as Oi S.A. has admitted, having voluntarily sought protection under the insolvency laws of the Netherlands, any restructuring of Coop's liabilities requires approval in the Netherlands pursuant to Dutch law to be effective.⁹⁷ Given the lack of a treaty between Brazil and the Netherlands, even if the Brazilian RJ Debtors tried to compromise Coop's debts in the Brazilian RJ Proceeding, that compromise will not be recognized in the Netherlands and the EU absent its approval by the Dutch Court and Coop's creditors.

⁹⁷ See supra ¶¶ 75; SoP Petition §§ 5.4 & 6.1.

129. *Third*, the Coop Loan Claims, which Oi S.A. used to support establishing Coop's COMI in Brazil,⁹⁸ are now ignored under the proposed Brazilian RJ Plan, and thus, no longer support the prior rulings that Coop's COMI is in Brazil. On June 20, 2016, the Coop Board stated that Coop's claims against Oi S.A. and Oi Móvel (*i.e.*, the Coop Loan Claims) would be respected, and on June 29 and July 22, 2016, respectively, the Coop Loan Claims were relied upon by the Brazilian RJ Court and this Court to support finding Coop's COMI in Brazil. Shortly thereafter, first on July 26, 2016 and again on August 9, 2016, the Coop Board made representations to the Dutch Court in connection with its SoP Petition that supported the Dutch Court's exercise of jurisdiction over Coop, and less than one month later, Oi S.A. submitted a proposed Brazilian RJ Plan with Coop as a co-proponent that renounces Coop's rights to recover anything on account of the purportedly COMI-creating Coop Loan Claims.

130. It also should not go unnoticed that Oi S.A. moved substantially all of Coop's tangible assets from the Netherlands to Brazil on the "eve of bankruptcy," and then purported to rely upon its conflicted — if not unlawful — conduct to establish Brazil as the COMI for Coop, while concurrently disregarding the economic consequences for Coop and its creditors. This continuing course of self-serving conduct only confirms the Insolvency Trustee's belief that Coop's most valuable assets are the Potential Causes of Action against Oi S.A., Oi Móvel and the Coop Board.⁹⁹

131. Thus, for all the foregoing reasons, the Court should find that Coop's COMI is in the Netherlands based on intervening facts that have occurred since the Court's prior ruling.

⁹⁸ See Brazilian Verified Petition ¶ 29 (stating that all of Coop's "substantial assets—namely, intercompany receivables against Brazilian entities" are located in Brazil).

⁹⁹ The Potential Causes of Action arise primarily under Dutch law and are to be pursued in the Netherlands.

B. The Insolvency Trustee is the Foreign Representative for Coop

132. The term "foreign representative" means "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). The Insolvency Trustee satisfies both of the foregoing requirements.

133. The Insolvency Trustee is a person appointed to oversee the reorganization or liquidation of the assets of Coop and now has sole control over Coop's assets and business affairs pursuant to Dutch law.¹⁰⁰ This Court has previously found that a fiduciary appointed in a Dutch insolvency proceeding pending pursuant to the Dutch Insolvency Act is considered a "foreign representative." Upper Deck Recognition Order, at 2 (finding that a Dutch insolvency trustee is considered a "duly appointed foreign representative . . . within the meaning of section 101(24) of the Bankruptcy Code"); *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief* at 4, In re Grupo Isolux Corsan, S.A., No. 16-12202 (Bankr. S.D.N.Y. Nov. 17, 2016) [ECF No. 50] (recognizing a foreign representative appointed in a Dutch suspension of payments proceeding as a "duly appointed 'foreign representative' of the debtors within the meaning of section 101(24) of the Bankruptcy Code"); see also In re Vitro S.A.B. de CV, 701 F.3d 1031, 1045 (5th Cir. 2012) ("A federal court's recognition of representatives appointed in the course of a foreign bankruptcy proceeding or liquidation proceeding is a matter of comity—it is an acknowledgement of the validity of the foreign proceeding.") (citation omitted). Similarly, the Court should conclude in this instance that the

¹⁰⁰ Dutch Insolvency Act § 68; Dutch SJ Chapter 15 Decision ¶¶ 9-10 (authorizing the Insolvency Trustee to file this chapter 15 proceeding and seek this Court's recognition of the Insolvency Trustee as the foreign representative for Coop).

Insolvency Trustee is the "foreign representative" of Coop as defined under the Bankruptcy Code.

134. Moreover, for the reasons discussed above (see supra ¶¶73-75), by operation of Dutch law, Mr. Berkenbosch is currently the *only* person or entity with control over Coop's property. The Oi Foreign Representative can no longer serve as the foreign representative of Coop and the Proposed Order provides for this Court's termination of its recognition of such representative for Coop. Thus, the Court should recognize the Insolvency Trustee as the Foreign Representative for Coop.

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

135. The final requirement for recognition of a foreign proceeding under section 1517(a) of the Bankruptcy Code is that the petition for recognition meets the procedural requirements of section 1515 of the Bankruptcy Code. See 11 U.S.C. § 1517(a)(3). These requirements have been satisfied.

136. The Insolvency Trustee duly and properly commenced this chapter 15 case in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by filing the Voluntary Petition, this Verified Petition and Motion and the Berkenbosch Declaration. See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 127 (Bankr. S.D.N.Y. 2007) ("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."), aff'd, 389 B.R. 325 (S.D.N.Y. 2008). All documents and information required by section 1515 of the Bankruptcy Code and the Bankruptcy Rules have been included with the Voluntary Petition, this Verified Petition and Motion and the Berkenbosch Declaration, including: (a) a certified copy (with English translation thereof) of the Dutch Court of Appeals Decision

commencing the Dutch Bankruptcy Proceeding and appointing the Insolvency Trustee; (b) a statement identifying all foreign proceedings with respect to the Coop that are known to the Insolvency Trustee; (c) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; and (d) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of Coop, (ii) all parties to litigation pending in the United States in which Coop is a party at the time of the filing of the petition and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code.

137. Having filed the above-referenced documents and because this Court is entitled to presume the authenticity of such documents filed in support of the Voluntary Petition under section 1516(b) of the Bankruptcy Code, the requirements of section 1515 of the Bankruptcy Code have been satisfied. See 11 U.S.C. § 1516(b); Bear Stearns, 374 B.R. at 127 ("The petition for recognition must be accompanied by evidentiary documents which are presumed to be authentic in the absence of evidence to the contrary.").

D. The Relief Requested Pursuant to Sections 105, 1507 and 1521 of the Bankruptcy Code is Necessary and Appropriate.

138. Upon recognition of a foreign proceeding, section 1520 of the Bankruptcy Code prescribes certain forms of relief available to a foreign representative and with respect to property of the debtor within the territorial jurisdiction of the United States. Such relief, which is set forth in the Proposed Order, is granted automatically as a consequence of recognition, and section 1520 of the Bankruptcy Code requires no further showing to obtain such relief. 11 U.S.C. § 1520.

139. To further the goal of the orderly administration of Coop's estate, the Insolvency Trustee requests additional relief and assistance pursuant to sections 105, 1507 and

1521 of the Bankruptcy Code. Pursuant to section 1521(a) of the Bankruptcy Code, upon recognition of a foreign proceeding and at the request of a foreign representative, the Court may grant, with certain express exceptions not applicable here, "any appropriate relief," including "any additional relief that may be available to a trustee," provided that the Court determines that doing so is necessary to effectuate the purposes of chapter 15 and to protect the assets of the debtor or the interests of the creditors. 11 U.S.C. § 1521(a). Furthermore, section 1507(a) of the Bankruptcy Code provides that the Court may provide "additional assistance to a foreign representative." 11 U.S.C. § 1507(a). Finally, and, as in any bankruptcy case, a "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

140. Pursuant to section 1521(e) of the Bankruptcy Code, the standards for injunctive relief apply to some of the relief included in the Proposed Order. Pursuant to the Proposed Order, the Insolvency Trustee is requesting that, to the extent not otherwise stayed or suspended pursuant to section 1520 of the Bankruptcy Code, the Court stay and/or suspend the following actions by any person or entity: (a) the commencement or continuation of an individual action or proceeding concerning Coop's assets, rights, obligations or liabilities; (b) execution against Coop's assets; and (c) attempts to transfer, encumber or otherwise dispose of any of Coop's assets. See 11 U.S.C. § 1521(a)(1)-(3).

141. Injunctive relief is appropriate where: (a) there is a likelihood of success on the merits, (b) there is an imminent irreparable harm to the debtor's assets in the absence of an injunction, (c) the balance of harms tips in favor of the petitioner, and (d) the public interest weighs in favor of an injunction. See In re Lyondell Chem. Co., 402 B.R. 571, 588-89 (Bankr.

S.D.N.Y. 2009) (citing Calpine Corp. v. Nev. Power Co. (In re Calpine Corp.), 354 B.R. 45 (Bankr. S.D.N.Y. 2006), aff'd, 365 B.R. 401 (S.D.N.Y. 2007)). This standard is met here.

142. Pursuant to the Prior Recognition Order, actions by third party creditors have already been stayed by this Court. Because the Insolvency Trustee is requesting termination of recognition of the Brazilian RJ Proceeding with respect to Coop, the injunctive relief requested in the Proposed Order is necessary to continue the injunctive relief that already exists with respect to Coop under the Prior Recognition Order.

143. Actions by Oi S.A., the Coop Board and the Oi Foreign Representative, however, are potentially not subject to the stay under the Prior Recognition Order and there is a risk that Coop could suffer immediate and irreparable harm if, notwithstanding their lack of authority to do so under Dutch law, these parties attempt to take actions to undermine the Insolvency Trustee's authority or otherwise seek an end-run around the Dutch Bankruptcy Proceeding. See, e.g., In re Calpine Corp., 365 B.R. 401, 409 (S.D.N.Y. 2007) (a court may issue an injunction in the bankruptcy context "where the action to be enjoined is one that threatens the reorganization process"); In re Garcia Avila, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) ("irreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and fair distribution of assets in a single, centralized forum" (quoting 2 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 304.05 (15th ed. 2003))). Such actions may include taking actions intended to compromise the Coop NY Notes in the United States without the approval of the Dutch Court.

144. Granting the relief requested in the Proposed Order will not impose great harm because it will preserve the status quo of Coop's assets and liabilities pending the approval of and recognition and enforcement in the United States of a restructuring plan for Coop

consistent with Dutch law. Finally, the requested relief is consistent with the public policy because it will facilitate the Insolvency Trustee's efforts to complete a court-supervised reorganization process in the Netherlands in accordance with Dutch law.

145. The other requested relief set forth in the Proposed Order is necessary and appropriate for the administration of the Dutch Chapter 15 Proceeding.

146. For the reasons set forth herein, granting the relief set forth herein and in the Proposed Order is consistent with effectuating the purposes of chapter 15 of the Bankruptcy Code and will protect the assets of Coop and the interests of Coop's creditors.

RESERVATION OF RIGHTS

147. The Insolvency Trustee reserves all rights to amend, supplement or modify this Verified Petition and Motion to seek any and all additional relief available under chapter 15 of the Bankruptcy Code or otherwise.

NOTICE

148. Notice of this Verified Petition and Motion will be provided as set forth in the order approving the *Application for Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice*, filed contemporaneously herewith.

NO PRIOR REQUEST

149. No prior request for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, the Insolvency Trustee respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: July 7, 2017

Respectfully submitted,

/s/ Corinne Ball

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

VERIFICATION OF PETITION

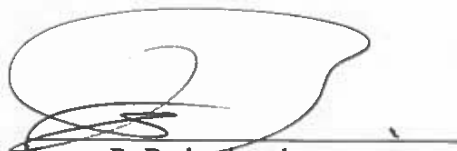
Jasper R. Berkenbosch, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury under the laws of the United States of America as follows:

I am the foreign representative for Oi Brasil Holdings Coöperatief U.A., and have full authority to verify the foregoing Verified Petition and Motion.

I have read the foregoing Verified Petition and Motion, 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: July 7, 2017



Jasper R. Berkenbosch
Foreign Representative

EXHIBIT A

PROPOSED ORDER

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

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

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

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

**ORDER (I) RECOGNIZING THE
 DUTCH BANKRUPTCY PROCEEDING AS THE
 FOREIGN MAIN PROCEEDING FOR OI BRASIL HOLDINGS
 COÖPERATIEF U.A.; (II) RECOGNIZING THE INSOLVENCY
 TRUSTEE AS THE FOREIGN REPRESENTATIVE; (III) MODIFYING
 THE PRIOR RECOGNITION ORDER; (IV) MODIFYING THE PRIOR JOINT
 ADMINISTRATION ORDER AND (V) GRANTING CERTAIN RELATED RELIEF**

This matter coming before the Court on the voluntary chapter 15 petition [ECF No. 1] (the "Voluntary Petition") and related *Verified Petition and Motion for an Order (I) Recognizing the Dutch Bankruptcy Proceeding as the Foreign Main Proceeding for Oi Brasil Holdings*

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).

Coöperatief U.A.; (II) Recognizing the Insolvency Trustee as 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 of Jasper R.
Berkenbosch, 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"); and having considered the Voluntary Petition, the Verified Petition and
Motion, the *Declaration of Jasper Berkenbosch in Support of Verified Petition and Motion for*
Related Relief (the "Berkenbosch Declaration"); and having considered the statements of counsel
with respect to the Voluntary Petition and the Verified Petition and Motion at a hearing before
the Court (the "Hearing"); and appropriate and timely notice of the filing of the Voluntary
Petition and the Verified Petition and Motion and the Hearing having been given; and no other or
further notice being necessary or required; and the Court having determined that the legal and
factual bases set forth in the Voluntary Petition, the Verified Petition and Motion, the
Berkenbosch Declaration and all other pleadings and proceedings in this case establish just cause
to grant the relief ordered herein, and after due deliberation therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the 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

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Verified
Petition and Motion.

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. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P) and the Amended Standing Order. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. Coop has satisfied the eligibility requirements of section 109(a) of the Bankruptcy Code.

D. This chapter 15 case was properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code.

E. The Voluntary Petition, together with the Verified Petition and Motion and the Berkenbosch Declaration, satisfy the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

F. Due and proper notice of the Voluntary Petition, the Verified Petition and Motion and related pleadings was provided in accordance with Bankruptcy Rule 2002(q). Notice of the Voluntary Petition, the Hearing and the relief requested in the Verified Petition and Motion was proper, adequate, sufficient and comported with due process under the circumstances, and no other or further notice is or shall be required.

G. The Dutch Bankruptcy Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code.

H. The Dutch Bankruptcy Proceeding is entitled to recognition by this Court pursuant to sections 1515 and 1517 of the Bankruptcy Code.

I. The Netherlands is the center of main interests of Coop, and accordingly the Dutch Bankruptcy Proceeding is a "foreign main proceeding" pursuant to section 1502(4) of the Bankruptcy Code and is entitled to recognition as a foreign main proceeding for Coop pursuant to section 1517(b)(1) of the Bankruptcy Code.

J. The Insolvency Trustee is a "person" as defined in section 101(41) of the Bankruptcy Code and a duly appointed "foreign representative" of Coop within the meaning of section 101(24) of the Bankruptcy Code.

K. The Insolvency Trustee, Coop and Coop's estate are entitled to all of the automatic relief available pursuant to section 1520 of the Bankruptcy Code without limitation.

L. Because, among other reasons, the Insolvency Trustee has a duty to protect the interests of Coop's creditors under Dutch law, the interests of creditors and other interested entities, including Coop, are sufficiently protected to warrant the relief set forth herein pursuant to section 1522 of the Bankruptcy Code.

M. The relief granted herein is necessary and appropriate to effectuate the purposes of chapter 15 and to protect the interests of Coop's creditors and other interested parties, is in the interests of the public and international comity, is consistent with the public policy of the United States and warranted pursuant to sections 105, 362, 1504, 1507, 1509, 1515, 1516, 1517, 1520, 1521 and 1522 of the Bankruptcy Code.

N. The grounds for previously entering the Prior Recognition Order with respect to Coop were based on less than full information and any partial grounds for its entry that may have existed have now ceased to exist given, among other things, the commencement of the Dutch Bankruptcy Proceeding, the appointment of the Insolvency Trustee and the Insolvency Trustee's sole and exclusive control over Coop's assets and liabilities.

O. The modification of the Prior Recognition Order set forth below will not materially prejudice any parties that have relied on that order since its entry.

NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The relief requested in the Voluntary Petition and the Verified Petition and Motion is granted as set forth herein. All objections and reservations of rights relating thereto that have not been withdrawn, waived or otherwise resolved are overruled in all respects and denied.

2. The Insolvency Trustee is recognized as the duly appointed "foreign representative" of Coop within the meaning of section 101(24) of the Bankruptcy Code and is authorized to act on behalf of Coop in this chapter 15 proceeding.

3. The Dutch Bankruptcy Proceeding is granted recognition as the foreign main proceeding with respect to Coop pursuant to section 1517 of the Bankruptcy Code.

4. The Insolvency Trustee, Coop and/or each of their successors, agents, representatives, advisors and counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code, and no action taken by any of the foregoing in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Dutch Bankruptcy Proceeding, this Order, this chapter 15 proceeding or the Brazilian Chapter 15 Proceeding shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

5. In connection with the recognition of the Dutch Bankruptcy Proceeding as the foreign main proceeding for Coop, all relief and protection afforded to a debtor and property of a debtor upon recognition of a foreign main proceeding pursuant to section 1520 of the

Bankruptcy Code is hereby granted to Coop and all of Coop's property that now or in the future is located within the territorial jurisdiction of the United States.

6. To the extent not otherwise stayed or suspended pursuant to section 1520 of the Bankruptcy Code, the following actions taken by any person or entity in the United States, other than the Insolvency Trustee and his representatives and agents, are stayed and suspended pursuant to section 1521 of the Bankruptcy Code: (a) the commencement or continuation of an individual action or proceeding concerning Coop's assets, rights, obligations or liabilities; (b) execution against Coop's assets; and (c) the right to transfer, encumber or otherwise dispose of any of Coop's assets.

7. Regardless of events that may occur in insolvency proceedings with respect to Coop in jurisdictions outside of the United States, the provisions of paragraphs 5 and 6 of this Order shall remain in full force and effect unless and until modified or terminated by further order of this Court.

8. The Insolvency Trustee is recognized as the exclusive representative of Coop in the United States and entrusted with the administration and distribution of all of Coop's assets within or being monetized in the territorial jurisdiction of the United States pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code.

9. All valid orders of the Dutch Supervisory Judge, the Dutch Court, the Dutch Court of Appeals and the Dutch Supreme Court (as applicable) in effect as of the date hereof that remain in full force and effect under Dutch law with respect to Coop's insolvency proceedings in the Netherlands shall be and hereby are granted comity and given full force and effect in the United States.

10. The Insolvency Trustee's right to seek further relief under section 1521 of the Bankruptcy Code is expressly preserved.

11. Pursuant to section 1517(d) of the Bankruptcy Code, the Prior Recognition Order is hereby modified to terminate (a) recognition of the Brazilian RJ Proceeding as a foreign main proceeding with respect to Coop, (b) recognition of the Oi Foreign Representative as a foreign representative of Coop and (c) the imposition of any relief or protection under sections 1520 or 1521 of the Bankruptcy Code for Coop that might arise under the Prior Recognition Order. Such termination as set forth in the preceding sentence shall occur simultaneously with the imposition of the relief and protection provided for Coop under the terms of this Order.

12. The relief set forth herein is without prejudice to the right of a duly authorized representative of Coop under Dutch law to seek renewed recognition of the Brazilian RJ Proceeding with respect to Coop at a later date.

13. For the avoidance of doubt, and to the extent not otherwise precluded by the relief provided under paragraphs 5 and 6 of this Order, the authority of the Oi Foreign Representative to take any action in the United States on behalf of Coop, including filing any pleadings in the name of Coop or seeking recognition of any restructuring plan for Coop, is hereby revoked.

14. Given the withdrawal of recognition of the Brazilian RJ Proceeding with respect to Coop, the Prior Joint Administration Order is modified to terminate the joint administration of Coop's Brazilian Chapter 15 Proceeding with the chapter 15 proceedings of the other Original Chapter 15 Debtors. This chapter 15 proceeding for Coop shall be separately administered under Case No. 17-11888 (SHL).

15. A docket entry shall be made in the chapter 15 proceeding of Oi S.A.

(Case No. 16-11791 (SHL)) and Coop's Brazilian Chapter 15 Proceeding (Case No. 16-11794 (SHL)), substantially as follows:

An Order has been entered (a) withdrawing the recognition of the Brazilian RJ Proceeding with respect to Oi Brasil Holdings Coöperatief U.A. ("Coop"), (b) recognizing the bankruptcy proceeding in the Netherlands with respect to Coop as the foreign main proceeding for Coop and (c) directing that Coop's new chapter 15 proceeding be separately administered from the chapter 15 proceedings of Oi S.A. and the other foreign debtors in the cases being jointly administered under Case No. 16-11791 (SHL). From this date forward, the docket in Case No. 17-11888 (SHL) should be consulted for all matters affecting or related to Coop.

16. The Insolvency Trustee is authorized to take all actions necessary to effectuate the relief granted by this Order without notice or further order of the Court. The Insolvency Trustee is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order.

17. A copy of this Order, conformed to be true and correct, shall be, within three (3) business days of entry of this Order, (a) served by electronic mail or first class mail, upon the Notice Parties (as defined in the *Application for Order Scheduling Hearing and Specifying the Form and Manner of Service of Notice*, filed on July 7, 2017) and (b) posted on the website maintained by the Insolvency Trustee at <http://www.oibrasilholdingscoop-administration.com>.

18. This Court retains jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to this Order, its implementation, or otherwise arising from or related to this chapter 15 proceeding.

19. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing.

New York, New York

Dated: _____, 2017

UNITED STATES BANKRUPTCY JUDGE