

## Chapter 15 Bankruptcy Overview

### [Phoenix File Chapter 15](#)

Find local bankruptcy lawyers in the Phoenix area.  
[www.DexKnows.com](http://www.DexKnows.com)

### [Avoid Business Bankruptcy](#)

Did you know you could eliminate business debt without bankruptcy?  
[www.CompanyRecovery.com](http://www.CompanyRecovery.com)

### [Raleigh Bankruptcy](#)

Travis Sasser, Bankruptcy Attorney Bankruptcy Chapters 7, 11, 13  
[www.carybankruptcy.com](http://www.carybankruptcy.com)

### [Personal Bankruptcy?](#)

This is not the end. We show you new possibilities to start over!  
[gordonlawgroup.com](http://gordonlawgroup.com)

### [Ct.Accident Lawyers](#)

Accidents, SSD, Workers Comp Board Certified Specialist  
[www.Aspellaw.com](http://www.Aspellaw.com)

### [Remove Your Bankruptcy?](#)

I Got My Bankruptcy Removed. I Raised My Score Over 200 Points!  
[www.AAACreditGuide.com](http://www.AAACreditGuide.com)

### [Bankruptcy Laws](#)

Compare Bankruptcy Alternatives. Fast, Effective Debt Relief Plans.  
[www.DebtReliefUSA.org](http://www.DebtReliefUSA.org)

Ads by Google

Ads by Google

Chapter 15, whose official title is Chapter 15 - Ancillary and Other Cross-Border Cases, was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Its purpose is to facilitate bankruptcies of companies that have assets in several countries.

One of the most important goals of chapter 15 is to promote cooperation and communication between U.S. courts and parties in interest with foreign courts and parties in interest in foreign proceedings involving assets and creditors in several countries. This goal is accomplished by, among other things, explicitly charging the court and estate representatives to "cooperate to the maximum extent possible" with foreign courts and foreign representatives and authorizing direct communication between the court and authorized estate representatives and the foreign courts and foreign representatives. 11 U.S.C. §§ 1525 - 1527

Foreign proceeding means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation. 11 U.S.C. §§ 101 (23)

Foreign representative is 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 the foreign proceeding. 11 U.S.C. §§ 101(24)

Chapter 15's purpose is realized through 5 objectives specified in [11 U.S.C. § 1501](#):

1. to promote cooperation between the United States courts and parties in interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;
2. to establish greater legal certainty for trade and investment;
3. to provide for the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor;
4. to afford protection and maximization of the value of the debtor's assets;

5. and to facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Chapter 15 allows a debtor in another country, with assets in the United States, to file an ancillary case in the U.S. so that the debtor's assets and creditors can be administered as an ancillary case of the main proceeding in the debtor's home country.

## **Territorialism And Universalism**

International bankruptcy proceedings could be characterized as either territorialism or universalism.

Territorialism (aka grab rule) was the most prevalent approach until recent times, where each country would grab all assets of the debtor and administer those assets under local law, including giving preference to local creditors.

Universalism reflects the ideals of comity better, by allowing a bankruptcy proceeding in 1 country to receive the assets located in other countries so that the assets or their proceeds can be distributed to all creditors, even international creditors, using whatever choice of laws that are considered most appropriate.

However, while pure universalism would seem ideal, political realities allow only a partial universalism, where established law designed specifically for transnational bankruptcies must be followed in the respective countries to deal with assets and creditors within the respective countries. To a large extent, Chapter 15 codifies this law, allowing other countries to use the U.S. court system to deal with assets and creditors located there.

Chapter 15 requires that U.S. courts give recognition to a foreign bankruptcy proceeding so that the foreign representative who files for Chapter 15 is given many of the same powers as a local bankruptcy trustee.

The court obtains jurisdiction over the debtor's assets located in the U.S. and the automatic stay prevents creditors from trying to collect on their debts. However, the court is not obligated to turnover assets to the foreign representative, but has some discretion to ensure that creditors located in the United States are sufficiently protected—local creditors should get at least as much under the foreign proceeding as they would under U.S. law based on the local assets. Another definition of sufficiently protected is that the foreign proceeding should be fair and does not discriminate against U.S. creditors to benefit creditors in the debtor's domicile.

Furthermore, §1506 gives courts the discretion to refuse to take any action that would be contrary to the public policy of the United States.

Because a bankruptcy proceeding under universalism gives preference to the laws of the country in which the proceeding was initiated, foreign courts, including the United States may refuse to cooperate if the main proceeding is taking place in a country that is not deemed to be the most appropriate forum. The proper forum should be the country where the debtor has the center of main interests (COMI), often identified as the country in which the business is registered or where its main business is located.

## UNCITRAL Model Law

Adopted from the Model Law on Cross-Border Insolvency promulgated by the United Nations Commission on International Trade Law (UNCITRAL) in 1997, Chapter 15 replaces section 304 of the Bankruptcy Code. Because Chapter 15 is based on a model law by UNCITRAL, the U.S. interpretation must be coordinated with the interpretation given by other countries that have adopted it to promote uniformity for cross-border insolvency cases. However, Chapter 15 excludes consumer debt; hence, this chapter is specifically to deal with the bankruptcies of multinational corporations.

This is still a rapidly evolving part of the law. So far, the following countries have adopted modified versions of the Model Law: Canada, Mexico, Japan, Great Britain, and Australia. The European Union has not adopted the UNCITRAL Model Law, but has enacted the Regulation on Insolvency in 2002 that governs bankruptcies with assets and creditors in different member countries, but not non-member countries.

Previous to cross-border regulations, most transnational bankruptcies were based on the judicial concept of comity, which is the deference of 1 nation to the legislative, executive, and judicial acts of another—not as an obligation, but as a courtesy serving international duty and convenience—so long as it doesn't deprive its own citizens of its rights.

As Chief Justice Taney of the U.S. Supreme Court has stated, comity is "by the general practice of civilized countries, the laws of the one will, by the comity of nations, be recognized and executed in another where the rights of individuals are concerned. . . . The comity thus extended to other nations is no impeachment of sovereignty. It is the voluntary act of the nation by which it is offered, and is inadmissible when contrary to its policy, or prejudicial to its interests. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it as a part of the voluntary law of nations. . . ."

## How Chapter 15 Works

Chapter 15 allows a foreign representative to seek injunctions, turnover assets, and seek other relief in the United States to prosecute its case. The Chapter 15 petition must be accompanied by documents that demonstrate the existence of the foreign proceeding and the authority of the foreign representative.

After notice and a hearing, the court may issue whether the foreign proceeding is a main proceeding or a non-main proceeding. A main proceeding is a bankruptcy case in the country where the debtor has most of its assets or does most of its business; otherwise, it is a non-main proceeding. If the judge declares that the proceeding is a main proceeding, then the automatic stay goes into effect; otherwise, the foreign representative must petition the court for a stay.

The federal representative is authorized to operate the debtor's business, to seek other relief either from the bankruptcy courts or from other state and federal courts, and can intervene in any other case where the debtor is a party, or be represented as a party in interest in insolvency proceedings affecting the debtor. However, what the foreign representative may do

may be restricted by any treaties between the United States and the foreign representative's country.

The foreign representative can also initiate a full bankruptcy case under Chapter 7 or 11 if it would serve the best interests of the bankruptcy estate. However, if a case is commenced under Chapter 7 or 11, then only assets or creditors located in the United States are subject to the court's jurisdiction, with deference to the main proceeding for other aspects of the case.

Foreign creditors must receive notice of the Chapter 15 in the United States, they must be informed of their right to file a claim, and they have a right to participate in the case.

### **Alternatives To Chapter 15**

A foreign debtor with business or property in the United States does not have to use Chapter 15 or commence a main proceeding in his country, but could file under Chapter 7 or Chapter 11. The debtor does not have to live in the United States to file under those chapters if the debtor has a business or property located in the United States.

However, if a main proceeding has already commenced in another country, the United States bankruptcy judge may decide to abstain from the case, if the foreign main proceeding has already been recognized by the U.S. court under Chapter 15 or if the debtor and its creditors would be better served by the dismissal or suspension of the case under a different chapter.