

Ch. 15 Ruling May Offer Path To Ch. 11 Workaround

By **Arthur Rosenberg** (May 14, 2025)

On Feb. 24, U.S. Bankruptcy Judge Michael E. Wiles of the U.S. Bankruptcy Court for the Southern District of New York issued a decision that had the effect of recognizing under Chapter 15 of the U.S. Bankruptcy Code an English scheme of arrangement involving a Mexican financial services company known as Operadora de Servicios Mega SA de CV, Sofom, ER — referred to as Mega Mexico.

More specifically, Judge Wiles approved the recognition of the English scheme of arrangement of Mega Newco Ltd., or Mega U.K., a wholly owned subsidiary of Mega Mexico that had been formed solely for the purpose of restructuring certain U.S. notes issued by Mega Mexico.



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By approving this structure, Judge Wiles allowed access to the U.S. courts for a restructuring of certain notes held by a single class of creditors that could not have been accomplished out of court or under the laws of Mexico or the U.S.

By recognizing this case under Chapter 15 of the U.S. Bankruptcy Code, Judge Wiles showed the flexibility and pragmatism of the U.S. Bankruptcy Courts — in particular the Southern District of New York — in assisting the effectuation of an international restructuring under what was essentially a totally consensual plan in which the proponents provided fulsome disclosure and transparency.

Background

Mega Mexico found itself in financial difficulty in 2024 and began negotiating with certain groups of its creditors, including an ad hoc committee that represented the holders of approximately 25% of a series of notes that Mega Mexico had issued in 2020 under an indenture governed by New York law — the U.S. notes.

After reaching a restructuring agreement with the noteholders committee, Mega Mexico considered several restructuring options. However, the 100% consent requirement imposed by the indenture for an out-of-court restructuring of the U.S. notes; limitations on court authority in a Mexican bankruptcy proceeding (apparently); and the likely cost, length and statutory breadth of a U.S. Chapter 11 proceeding led Mega Mexico to reject those options.

Instead, Mega Mexico sought other restructuring paradigms that would provide a court-overseen proceeding enabling it to effectuate a restructuring of only the U.S. notes in which a minority of holdouts could be compelled to accept the treatment agreed to by a supermajority of similarly situated creditors.

Although an English scheme of arrangement would have allowed Mega Mexico to obtain the necessary judicial approval of a settlement restructuring of only the U.S. notes, such a scheme would be available only to a debtor entity that had a substantial connection with the U.K. Such a connection would include having a registered office in the U.K., which Mega Mexico did not have.

To satisfy the requirements for filing an English scheme of arrangement, Mega Mexico and its advisers created Mega U.K. as a wholly owned subsidiary of Mega Mexico, with a

registered office in London. Mega U.K. assumed all the obligations of Mega Mexico under the U.S. notes, thereby becoming a co-debtor with Mega Mexico under those notes.

After accomplishing these steps, Mega U.K. presented a scheme of arrangement that included the settlement to the English courts. The English court approved the scheme under English law after full and proper notice was provided to holders of the U.S. notes. The U.K. scheme received unanimous approval from those holders of the U.S. notes who voted on the U.K. scheme, which totaled more than 75% of all such holders, and no objections were filed with the English court.

The U.K. scheme not only restructured the recently assumed U.S. notes for the benefit of the recently formed Mega U.K., but also provided third-party releases for the benefit of Mega Mexico, essentially giving Mega Mexico the benefits of the U.S. notes restructuring even though not itself a party to those proceedings.[1]

Once approved, Mega U.K. then filed a petition for recognition of the Mega U.K. scheme under Chapter 15 with the Bankruptcy Court for the Southern District of New York. If granted, recognition would bind all U.S.-based holders of the U.S. notes to the terms of the restructuring and allow Mega U.K. and Mega Mexico to fully effectuate the U.K. scheme, which was a condition of restructuring agreements with several other creditors of Mega Mexico and its affiliates.

No objections were filed to Mega U.K.'s request that the U.K. scheme be recognized, although Mega U.K. reached an agreement with the U.S. trustee to make certain modifications to the release provisions contained in the U.K. scheme.

Holding

In order to approve recognition of the U.K. scheme, Judge Wiles noted that he needed to determine whether the U.K. scheme was a "foreign main proceeding" or a "foreign nonmain proceeding." This required Judge Wiles to examine the circumstances underlying the creation of, and actions taken by, Mega U.K.

Turning first to the definition of a "foreign nonmain proceeding," Judge Wiles looked to Section 1502(5) of the U.S. Bankruptcy Code, as well as to several prior decisions from the Southern District of New York Bankruptcy Court and circuit courts, in order to determine whether Mega U.K. had a U.K. establishment, defining an "establishment" as "an actual place from which economic-facing activities are regularly conducted."

Based on these cases, Judge Wiles held that the restructuring activities conducted by Mega U.K. in the U.K. were insufficient to qualify as "economic-facing activities" that were being "regularly conducted" in the U.K. As a result, Judge Wiles held that the U.K. scheme could not qualify as a foreign nonmain proceeding.

Judge Wiles then turned to the question of whether the U.K. scheme was a foreign main proceeding, relying on the Section 1502(4) requirement that a foreign main proceeding occur where the debtor, i.e., Mega U.K., has its center of main interests, commonly known as COMI.

Relying on Section 1516(c) of the U.S. Bankruptcy Code, which provides that "[i]n the absence of evidence to the contrary, the debtor's registered office ... is presumed to be the center of the debtor's main interests," Judge Wiles determined that Mega U.K.'s COMI was England, as its registered office is in London, and Mega U.K. conducted its restructuring

there.

Given that no contrary evidence was submitted to rebut this COMI determination, Judge Wiles held that the U.K. scheme was, at least technically, a foreign main proceeding.

Despite this finding, Judge Wiles then equivocated on whether it was appropriate for the parties to have full access to Chapter 15 in a situation in which they intentionally manipulated the facts and essentially created the necessary conditions for Chapter 15 jurisdiction. He further noted the existence of form over substance and his concern for the possibility of abuse of the bankruptcy process by the parties and by similar parties following the Mega playbook.

Nonetheless, Judge Wiles noted the overall openness and fairness of the U.K. and U.S. proceedings, commenting that the structure created and procedures followed by the Mega entities and their advisers neither frustrated nor thwarted the rights of any creditors, and that the process instead enhanced recoveries for all parties and maximized the value of the underlying businesses of Mega Mexico and its affiliates.

Judge Wiles also noted the overwhelming support of all interested parties as to both the U.K. scheme and U.S. Chapter 15 proceeding, and the fact that no objections were filed in either proceeding after proper processes had been followed in both the U.K. and U.S.

As such, he recognized the U.K. scheme as a proceeding governed by Chapter 15.

Conclusion

The structures created and processes followed by the parties in the Mega restructuring were manufactured to create jurisdiction in the U.K. and U.S.

Though he expressed concerns that the system could be abused, Judge Wiles accommodated the parties' construct to accomplish a largely consensual restructuring, indicating that he would be willing to follow form over substance and recognize a "synthetic" structure in cases where the structure and process appear to have been fair and beneficial to all parties, where no objections were asserted to the restructuring after following the proper procedures, and where no unfairness or abuse was found.

It can be expected that, in the future, parties will utilize a similar construct to obtain the benefits of the single-class proceedings permitted under English law coupled with recognition and enforcement under Chapter 15 to accomplish restructuring transactions that would be difficult and certainly more expensive to accomplish in a plenary U.S. Chapter 11 proceeding.

Indeed, the ever-increasing costs, complexity and litigiousness of commercial Chapter 11 cases have spurred efforts to identify effective alternatives. However, any parties that attempt to use such a structure in the future would be smart to have the facts and evidence to support a finding that the process, structure and outcome are fair and not abusive, as well as few or no objections by interested parties, as these were key factors in Judge Wiles' decision in this case.

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[1] Judge Wiles did not deal with the issues surrounding third-party releases in his opinion, only noting in paragraph 16 of the Recognition Order that any releases of Mega Mexico in the U.K. scheme did not bind any parties that were not either "Scheme Creditors" or releasing parties under the "Deed of Release" executed in connection with the U.K. scheme.