

Insolvency and Restructuring Update - November 2014

November 20, 2014 | Client Update

In an opinion entered on November 17, 2014, Judge Stuart M. Bernstein of the United States Bankruptcy Court for the Southern District of New York held that Suntech Power Holdings Co., Ltd. was eligible to be a chapter 15 debtor by virtue of a bank account opened in the U.S. specifically for the purposes of establishing U.S. jurisdiction under the Second Circuit's controversial *Barnet* decision, and that Suntech's center of main interest ("COMI") was the Cayman Islands despite conducting no business in the Cayman Islands prior to its filing of a winding-up proceeding there. Under chapter 15, COMI is important for establishing whether the foreign proceeding is the "main" or a "non-main" proceeding, and certain relief, such as the automatic stay, is automatically available upon recognition of a foreign main proceeding. The court rejected arguments made by Solyndra Residual Trust that Suntech had manipulated venue and COMI. Judge Bernstein's ruling highlights that the technical eligibility requirements for a chapter 15 filing can be met with appropriate pre-filing planning by many foreign debtors that wish to avail themselves of the U.S. court system for a proper purpose.

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