DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Timothy Graulich, Esq.
Darren S. Klein, Esq.
Stephen D. Piraino, Esq.
Richard J. Steinberg, Esq.

Counsel to the Foreign Representative

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: **DIGICEL INTERNATIONAL FINANCE LIMITED, *et al.*,**[1] **Debtors in Foreign Proceedings**	**Chapter 15** **Case No. 23-11625 (JPM)** **(Joint Administration Pending)**

MOTION FOR (I) RECOGNITION OF FOREIGN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) RECOGNITION OF SANCTION ORDERS AND RELATED SCHEMES, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

[1] The Debtors in these chapter 15 cases (the "**Chapter 15 Cases**"), along with each Debtor's registration number, are: Digicel International Finance Limited (02649); Digicel Intermediate Holdings Limited (55586); and Digicel Limited (53898). The Debtors' registered office and mailing address is Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

PAGE(S)

PAGES(S)

STATUTES & RULES

PAGES(S)

PAGES(S)

OTHER AUTHORITIES

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Lawrence Hickey, in his capacity as the authorized foreign representative (the "**Foreign Representative**")[2] of Digicel International Finance Limited ("**DIFL**"), Digicel Intermediate Holdings Limited ("**DIHL**) and Digicel Limited ("**DL**" and, together with DIFL and DIHL, the "**Debtors**"), which are subject to the reorganization proceedings entitled (i) "In the Matter of Digicel International Finance Limited" concerning a scheme of arrangement under section 99 of the Bermuda Companies Act between DIFL and DIHL on the one hand and the DIFL Scheme Creditors on the other and (ii) "In the Matter of Digicel Limited" concerning a scheme of arrangement under section 99 of the Bermuda Companies Act between DL and the DL Scheme Creditors (collectively, the "**Schemes**"), pending before the Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2023: Nos. 305 and 306 (together, the "**Bermuda Proceedings**"), by and through the undersigned counsel, respectfully submits this motion (this "**Motion**") and represents as follows:

RELIEF REQUESTED

1. Pursuant to this Motion, the Foreign Representative respectfully requests, pursuant to sections 105(a), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, 1522, and 1525(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), entry of an order substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**" and, when as entered, the "**Order**"):

(a) granting recognition of the Bermuda Proceedings as "foreign main proceedings" (as defined in section 1502(4) of the Bankruptcy Code) of the Debtor, pursuant to

[2] Capitalized terms used but not defined herein shall have the meanings given to such terms in the Foreign Representative Declaration (as defined below) filed contemporaneously herewith or the Explanatory Statement attached as **Exhibit P** to the Foreign Representative Declaration, as applicable.

section 1517 of the Bankruptcy Code, all relief included therewith as provided in section 1520 of the Bankruptcy Code, and related relief under section 1521(a); [3]

(b) finding that the Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and that the Foreign Representative is authorized to act on behalf of the Debtors for purposes of the Chapter 15 Cases;

(c) entrusting the Foreign Representative with the power to administer, realize, and distribute all assets of the Debtors within the territorial jurisdiction of the United States;

(d) recognizing and enforcing the Schemes (as defined below) in the United States and giving full force and effect, and granting comity in the United States, to the Sanction Orders (as defined below), including, without limitation, giving effect to the Releases (as defined below) set forth in the Schemes and to allow the Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents to take actions necessary to consummate the Schemes and transactions contemplated thereby;

(e) permanently enjoining all entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents from

[3] Alternatively, should the Court decline to recognize the Bermuda Proceedings as the Debtors' foreign main proceedings, the Foreign Representative respectfully requests that the Court recognize such proceedings as "foreign nonmain proceedings" (as defined in section 1502(5) of the Bankruptcy Code), and grant appropriate relief to the same extent such relief would be granted pursuant to section 1520(a) of the Bankruptcy Code had the proceeding been recognized as foreign main proceedings.

(i) commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Bermuda Proceedings, Schemes, or Sanction Orders, including, without limitation, to obtain possession of, exercise control over, or assert claims against the Debtors or their property or (ii) taking any action against the Debtors or their property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled, or released under the Schemes (including as a result of the laws of Bermuda or other applicable jurisdiction, as contemplated under the Schemes) or the Sanction Orders;

(f) authorizing and directing the Directed Parties[4] and any successor trustees or agents to take any and all actions necessary to give effect to the terms of the Schemes and transactions contemplated thereby;

(g) exculpating and releasing the Directed Parties from any liability for any action or inaction taken in furtherance of, and/or in accordance with, the Proposed Order or the Schemes, except for any liability arising from any action or inaction constituting gross negligence, actual fraud, or willful misconduct as determined by the Court (as defined below); and

(h) granting such other and further relief as the Court deems just and proper.

[4] "**Directed Parties**" means The Depository Trust Company ("**DTC**") (i.e., the record holder of the global notes representing all of the Existing Notes (as defined below)), the Existing Notes Trustee, the Existing Notes Trustees' agents, attorneys, successors, and assigns, and the Administrative Agent.

The relief requested in this Motion is without prejudice to any additional relief the Foreign Representative may request.[5]

2. In support of this Motion, the Foreign Representative refers the Court to the statements contained in: (a) the *Declaration of Lawrence Hickey in Support of the Motion for (I) Recognition of Foreign Proceedings, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Orders and Related Schemes, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code and Additional First Day Filings* (the "**Foreign Representative Declaration**"); (b) the *Declaration of C. Christian R. Luthi in Support of the Motion for (I) Recognition of Foreign Proceedings, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Orders and Related Schemes, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code and Additional First Day Filings* (the "**Foreign Law Declaration**"); and (c) the *Lists Pursuant to Federal Rules of Bankruptcy Procedure 1007(a)(4) and 7007.1 and Local Rule 1007-3* (the "**Bankruptcy Disclosures**" and, together with the Foreign Representative Declaration, and the Foreign Law Declaration, the "**Supporting Documents**"), which have been filed contemporaneously herewith and are incorporated herein by reference.

PRELIMINARY STATEMENT

3. The Debtors are Bermuda incorporated non-operating holding companies that directly or indirectly own other holding and operating companies, which collectively comprise the Digicel group of companies (collectively, "**Digicel**" or the "**Group**"). The Debtors are intermediate holding companies in the Group's organizational structure.

[5] The Foreign Representative is not seeking provisional relief at this time because he is not aware of any imminent threat to the Debtors' assets located within the territorial jurisdiction of the United States or to the Bermuda Proceedings by virtue of actions in the United States. If circumstances change or the Foreign Representative becomes aware of additional facts, the Foreign Representative reserves all rights to seek provisional relief pursuant to section 1519 of the Bankruptcy Code to protect the Debtors and their assets.

4. Digicel is a leading integrated communications and entertainment provider that operates in 25 markets in the Caribbean and Central America, providing a comprehensive range of mobile communications, business solutions, cable television, broadband, mobile financial services, and other related products and services to retail, corporate (including small and midsize enterprises), and government customers. The Debtors' main assets are their respective equity interests in the other Group companies.

5. The Schemes represent the culmination of lengthy and extensive creditor negotiations that resulted in entry into the DL/DIFL RSA (as defined below) on June 27, 2023. The DL/DIFL RSA, which has overwhelming creditor support, outlines the terms of the Restructuring Transactions to be implemented through (a) the Exchange Offer Memorandum with respect to the Existing DIFL Subordinated Notes, (b) the Proxy Solicitation with respect to the Existing Notes other than the Existing DIFL Subordinated Notes, and (c) ultimately, assuming satisfaction of the 75% Condition (as defined in the Explanatory Statement), the Schemes. The 75% Condition was satisfied as of the Commitment Payment Election Deadline. Indeed, nearly all DL Scheme Creditors and DIFL Scheme Creditors submitted instructions to the Information Agent to act as their irrevocable proxy for voting in favor of the Schemes at the Scheme Meetings (as defined below).[6] As described in greater detail below, the Debtors have provided all relevant parties with required notice of the commencement of the Bermuda Proceedings, the Schemes, and the deadline for voting on and objecting to the Schemes. The Scheme Meetings are scheduled to take place on October 18, 2023. Assuming the requisite number of creditors vote in favor of the

[6] As of the Commitment Deadline, holders of approximately (a) 99.06% of Existing DIFL Subordinated Notes by value, (b) 96.88% of the Existing DL Notes by value, (c) 99.54% of the Existing DIFL Unsecured Notes by value, (d) 99.33% of the Existing DIFL Secured Notes, and (e) 97.37% of the Term Loans by value, by means of the Exchange Offering, Proxy Solicitation, or DIFL/DL RSA (as applicable) submitted instructions to the Information Agent to act as their irrevocable proxy for voting in favor of the Schemes.

Schemes (which the Debtors expect to be the case given the overwhelming number of proxies to vote in favor of the Schemes that have already been irrevocably delivered to the Information Agent for each class of Scheme Creditors), the Debtors anticipate obtaining the Bermuda Court's sanctioning of the Schemes at the Sanction Hearing (as defined below) on November 3, 2023.

6. As described in further detail below and in the Foreign Representative Declaration, the purpose of the Schemes is to effectuate the compromise, refinancing, and equitization of the (a) senior notes due 2023 (the "**Existing DL Notes**") in exchange for the DL Scheme Consideration pursuant to the DL Scheme and (b) subordinated notes due 2026 (the "**Existing DIFL Subordinated Notes**") in exchange for the DIFL Subordinated Notes Consideration, (c) senior cash pay/PIK notes due 2025 (the "**Existing DIFL Unsecured Notes**") in exchange for the DIFL Unsecured Notes Consideration, (d) senior secured notes due 2024 (the "**Existing DIFL Secured Notes**" and, together with the Existing DL Notes, the Existing DIFL Subordinated Notes, and the Existing DIFL Unsecured Notes, the "**Existing Notes**") in exchange for the DIFL Secured Notes Consideration and (e) term loans borrowed by DIFL (the "**Term Loans**" and, collectively with the Existing Notes, the "**Existing Indebtedness**") (each as further defined and discussed below) in exchange for the Term Loans Consideration, in each case, pursuant to the DIFL Scheme or the DL Scheme, as applicable. An order from this Court recognizing the Bermuda Proceedings and enforcing the Schemes and the Sanction Orders within the territorial jurisdiction of the United States is a condition precedent to the effectiveness of each of the Schemes. Moreover, effectiveness of the DIFL Scheme is interconditional with the DL Scheme. As such, entry of the Proposed Order is required to ensure that the Restructuring Transactions, including the mission-critical restructuring of the Existing Indebtedness, is properly effectuated and fully binding in the United States.

JURISDICTION AND VENUE

7. The United States Bankruptcy Court for the Southern District of New York (the "**Court**") has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* M-431 dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this Court pursuant to 28 U.S.C. § 1410 because the Debtors' principal assets in the United States—a bank account located in Manhattan and a retainer deposited with counsel to the Foreign Representative that is being held in a Manhattan bank account for the benefit of the Debtors—are in this District.

8. The Foreign Representative has properly commenced the Chapter 15 Cases under sections 1504 and 1509 of the Bankruptcy Code by filing the Chapter 15 Petitions (as defined below) seeking recognition of the Bermuda Proceedings under section 1515 of the Bankruptcy Code.

BACKGROUND

9. The following is an overview of the Debtors and the Group, the indebtedness to be compromised under the Schemes, the events leading up to the Bermuda Proceedings, the origins and development of the Schemes, the filing of the Bermuda Proceedings, and the entry of the Convening Orders (as defined below). The Foreign Representative respectfully refers the Court to the Foreign Representative Declaration and the Foreign Law Declaration for additional information.

A. Debtors' Business Operations and Preexisting Capital Structure

10. The Digicel Group is a leading integrated communications and entertainment provider in the Caribbean and Central America, providing a comprehensive range of mobile communications, business solutions, cable television, broadband, mobile financial services, and

other related products and services to retail, corporate (including small and midsize enterprises), and government customers. Founded in the early 2000s principally as a mobile telephone provider in Jamaica, the Group quickly expanded to a range of new markets and businesses through a combination of new ventures and acquisitions of existing companies. Today, the Group's business consists of three principal segments—(a) mobile, (b) Digicel+ (cable TV and broadband), and (c) business solutions. The Group employs a global workforce of approximately 5,500 people and provides products and services to over 10 million customers, including individuals, corporations, and governments, across 25 markets around the Caribbean and Central America, including Bermuda.

11. The Debtors are non-operating intermediate holding companies that are part of the Group. As set forth in the simplified organizational chart below, the Group's ultimate parent is currently Digicel Group Holdings Limited ("**DGHL**"). DGHL is the sole shareholder of DL. DL, in turn, is the sole shareholder of Digicel Holdings (Bermuda) Limited ("**DHL**"), which is the sole shareholder of DIHL, which in turn is the sole shareholder of DIFL. The Group operates its business primarily through DIFL's direct and indirect subsidiaries.

12. DGHL and DHL are not debtors in the Chapter 15 Cases. As explained in more detail below, DGHL is subject to a separate scheme of arrangement pending before the Bermuda Court (the "**DGHL Scheme**") and a chapter 15 proceeding captioned *Digicel Group Holdings Limited*, No. 23-11479 (JPM) (the "**DGHL Chapter 15 Proceeding**"). The DGHL Scheme is expected to be consummated prior to consummation of the Schemes, pursuant to which DGHL will eventually be wound-up. Following effectiveness of the Schemes (which are not conditioned upon consummation of the DGHL Scheme), DHL will replace DGHL as the ultimate parent of the Group.

13. Each of the Debtors is incorporated in Bermuda and maintains its registered offices in Bermuda. Additionally, the Debtors maintain their books and records in Bermuda and occasionally hold board meetings there. Furthermore, the Debtors are also required by the Bermuda Companies Act to maintain registers of their directors and officers at their registered offices in Bermuda. Due to the Debtors' presence in Bermuda, their restructuring activities (as further described herein) have largely been centralized in Bermuda.

14. Even more, as non-operating holding companies, the Debtors function exclusively in Bermuda.[7] As shown in the structure chart above, each of the Debtors directly or indirectly owns other holding and operating companies that comprise Digicel. A summary of the Debtors' main assets, is as follows:

a. DL: DL's principal assets include its equity interests in DHL.

[7] DIFL was originally incorporated in St. Lucia, but was continued into Bermuda in July 2023.

b. DIHL: DIHL's principal assets include its equity interests in DIFL, which is a Bermuda Company.

c. DIFL: DIFL's primary assets include direct and indirect interests in various operating companies within the Digicel Group.

15. While Digicel operates throughout the Caribbean and Central America, it has a significant presence in the Bermuda marketplace. As of March 31, 2023, Digicel occupied the number one position in the mobile telecommunications services market in Bermuda, with over 49% of the market share and it generated approximately $84 million in revenue from its Bermuda operations for the year ended March 31, 2023.[8]

16. The Debtors' outstanding funded indebtedness as of March 31, 2023 consisted of approximately $3.8 billion in aggregate principal amount, consisting of the following instruments:[9]

a. Existing DL Notes. On March 3, 2015, DL issued approximately $925 million in aggregate principal amount of 6.750% Senior Notes due 2023 (the "**Existing DL Notes**," and the holders of the Existing DL Notes, the "**Existing DL Noteholders**") pursuant to that certain indenture dated as of March 3, 2015, by and among DL, as issuer, the guarantors party thereto,[10] and Deutsche Bank Trust Company Americas, as trustee (the "**Existing Notes Trustee**") (as amended, supplemented, or otherwise modified from time to time, the "**Existing DL Notes Indenture**"). A true and correct copy of the Existing DL

[8] The Group's latest audited year-end financials are for the year ending March 31, 2023.

[9] Excludes capitalized PIK interest on the Existing DIFL Unsecured Notes. The summary of the Debtor's funded indebtedness provided herein is for informational purposes only and is qualified in its entirety by the specific terms and conditions of such debt's governing documents.

[10] The Existing DL Notes and the Existing DIFL Subordinated Notes (as defined below) are guaranteed by certain of the Group's operating companies (the "**DL/DIFL Guarantors**").

Notes Indenture is attached to the Foreign Representative Declaration as **Exhibit A**.

b. Existing DIFL Secured Notes. On March 15, 2019, DIFL and DIHL[11] co-issued approximately $1.23 billion in aggregate principal amount of 8.75% Senior Secured Notes due 2024 (the "**Existing DIFL Secured Notes**" and the holders of the Existing DIFL Secured Notes, the "**Existing DIFL Secured Noteholders**") pursuant to that certain indenture dated as of March 15, 2019, by and among DIFL and DIHL, as co-issuers, the guarantors party thereto (the "**DIFL Guarantors**"),[12] and the Existing Notes Trustee, as trustee, (as amended, supplemented, or otherwise modified from time to time, the "**Existing DIFL Secured Notes Indenture**"). The Existing DIFL Secured Notes rank *pari passu* with the Term Loans and Bridge Facilities, are guaranteed by the DIFL Guarantors, and are secured by the same collateral as the existing loans under the Term Loans and the Bridge Facilities. A true and correct copy of the Existing DIFL Unsecured Notes Indenture is attached to the Foreign Representative Declaration as **Exhibit B**.

c. Term Loans. DIFL is a borrower under that certain First Lien Credit Agreement, dated as of May 25, 2017, by and among DHL, as holdings, DIFL, as co-borrower, DIFL US Finance LLC (which was subsequently merged into DIFL),

[11] DIHL replaced DHL as a co-issuer of the (i) Existing DIFL Subordinated Notes, (ii) Existing DIFL Unsecured Notes, (iii) Existing DIFL Secured Notes, and (iv) Term Loans through supplemental indentures with respect to each of the Existing DIFL Notes Indentures, respectively, and through a successor guaranty agreement with respect to the Term Loans, each dated June 24, 2020.

[12] The Existing DIFL Unsecured Notes, the Existing DIFL Secured Notes, the Term Loan, and the Bridge Facilities (each as defined herein) are guaranteed by certain of the operating subsidiaries of DIFL (the "**DIFL Guarantors**").

as co-borrower, the DIFL Guarantors party thereto, the lenders from time to time party thereto, and Citibank N.A., as administrative agent, collateral agent, and issuing bank (the "**Administrative Agent**") (the "**Credit Agreement**" and the term loans issued pursuant thereto, the "**Term Loans**").

d. Existing DIFL Subordinated Notes. On May 22, 2020, DIFL and DIHL[13] co-issued approximately $250 million in aggregate principal amount of 8.00% Subordinated Notes due 2026 (the "**Existing DIFL Subordinated Notes**," and the holders of the Existing DIFL Subordinated Notes, the "**Existing DIFL Subordinated Noteholders**") pursuant to that certain indenture dated as of May 22, 2020, by and among DIFL and DIHL, as co-issuers, the DL/DIFL Guarantors party thereto, and the Existing Notes Trustee, as trustee (as amended, supplemented, or otherwise modified from time to time, the "**Existing DIFL Subordinated Notes Indenture**").

e. Existing DIFL Unsecured Notes. On May 22, 2020, DIFL and DIHL co-issued approximately $317 million in aggregate principal amount of 13.00% Senior Cash Pay/PIK Notes due 2025 (the "**Existing DIFL Unsecured Notes**," and together with the Existing DIFL Secured Notes and the Existing DIFL Subordinated Notes, the "**Existing DIFL Notes**," and together with the Existing DL Notes, the "**Existing Notes**," and holders of the Existing DIFL Unsecured Notes, the "**Existing DIFL Unsecured Noteholders**," and together with the Existing DIFL Secured Noteholders and Existing DIFL Subordinated

[13] DIHL replaced DHL as a co-issuer of the (i) Existing DIFL Subordinated Notes, (ii) Existing DIFL Unsecured Notes, (iii) Existing DIFL Secured Notes, and (iv) Term Loans through supplemental indentures with respect to each of the Existing DIFL Notes Indentures, respectively, and through a successor guaranty agreement with respect to the Term Loans, each dated June 24, 2020.

Noteholders, the "**Existing DIFL Noteholders**," and together with the Existing DL Noteholders, the "**Existing Noteholders**"), pursuant to that certain indenture dated as of May 22, 2020, by and among DIFL and DIHL, as co-issuers, the DIFL Guarantors party thereto, and the Existing Notes Trustee, as trustee (as amended, supplemented, or otherwise modified from time to time, the "**Existing DIFL Unsecured Notes Indenture**," and, together with the Existing DIFL Secured Notes Indenture and the Existing DIFL Subordinated Notes Indenture, the "**Existing DIFL Notes Indentures**" and, together with the Existing DL Notes Indenture, the "**Existing Notes Indentures**").

f. Bridge Facilities. On June 27, 2023, DIFL entered into that certain Bridge Facility Amendment to the Credit Agreement, by and among DIHL, as holdings, DIFL, as co-borrower, DIFL US Finance LLC (which was subsequently merged into DIFL), as co-borrower, the DIFL Guarantors party thereto, the lenders from time to time thereto, and the Administrative Agent, as administrative agent (the "**Bridge Facility Amendment**," and the bridge loans issued pursuant thereto, the "**Bridge Facilities**" and together with the Term Loans and the Existing Notes, the "**Existing Indebtedness**"), which provided commitments for an aggregate principal amount of $60 million of term loans (split between two tranches of $24 million and $36 million, respectively, for each Bridge Facility).

17. The Existing Notes Indentures and Credit Agreement include numerous terms and provisions that provide notice to the Debtors' creditors that a restructuring of the Debtors' obligations could take place in Bermuda, under Bermuda law, and that the ability of the Debtors to repay the Existing Notes is dependent, in part, on operations and revenues derived from

Bermuda. For example, the Existing Notes Indentures include "the bankruptcy law of Bermuda" within the definition of "Bankruptcy Law."[14] Similarly, the Solicitation Statement and Exchange Offer Memorandum (each as defined below) made clear that the Debtors are exempted companies incorporated under the laws of Bermuda with limited liability,[15] and that, because the Debtors are incorporated in Bermuda, a potential insolvency proceeding relating to the Debtors would likely involve the bankruptcy laws of Bermuda.[16] Moreover, the Solicitation Statement highlights, throughout various risks factors, how Existing Noteholders' rights could be affected as a result of the application of Bermuda law,[17] and how the Group generated approximately $84 million in revenue in Bermuda for the year ended March, 31, 2023.[18]

B. The 2020 Restructuring

18. In the years preceding the 2020 Restructuring (as defined herein), Digicel saw significant reductions in voice revenues, which was largely due to the industry-wide trend of voice services being substituted by users' data usage. At the time, revenue from other related services, such as Digicel's business solutions and cable television and broadband businesses did not grow enough to offset the decline in voice revenues. To remain competitive, Digicel continued to expand its business solutions and cable television and broadband businesses, which required

[14] *See* Existing DL Notes Indenture, § 1.01; Existing Subordinated Notes Indenture, § 1.01; Existing Unsecured Notes Indenture, § 1.01; Existing Secured Notes Indenture, § 1.01.

[15] *See* Solicitation Statement at 59 ("Digicel Limited is an exempted company, incorporated with limited liability under the laws of Bermuda on October 16, 2000, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda. . . . Digicel Intermediate Holdings Limited is an exempted company, incorporated with limited liability under the laws of Bermuda on May 21, 2020, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda. Digicel International Finance Limited was redomiciled by continuance from St. Lucia to Bermuda on July 11, 2023, and is an exempted company with limited liability registered under the laws of Bermuda, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda.").

[16] *See id.* at 121 (including a section entitled "*Certain Insolvency Law and Local Law Limitations*" which discusses how the Existing Notes may be compromised pursuant to Bermuda insolvency law).

[17] *See generally id.*, Risk Factors, at 16-17, 24-26.

[18] *See id.* at F-37.

significant capital expenditures. As a result, Digicel found itself with unsustainable levels of indebtedness. As of September 30, 2019, the Group's total outstanding debt was approximately $7.4 billion, which included, among other things, $1 billion in aggregate principal amount of 8.250% Senior Notes due 2022 (the "**DGL1 Notes**" and, the holders thereof, the "**DGL1 Noteholders**") issued by Digicel Group One Limited ("**DGL1**"), a non-operating holding company incorporated and with its registered office in Bermuda.

19. As a result, in an effort to achieve a comprehensive restructuring of its balance sheet, DGL1 commenced a reorganization proceeding (the "**2020 Bermuda Proceeding**") ultimately captioned *In the Matter of Digicel Group One Limited (Provisional Liquidators Appointed for Restructuring Purposes) and In the Matter of Section 99 of the Companies Act 1981* concerning a scheme of arrangement (under section 99 of the Bermuda Companies Act 1981) between DGL1 and the DGL1 Noteholders (the "**2020 Scheme**" or the "**2020 Restructuring**") before the Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2020: No. 149 on April 28, 2020.

20. On May 15, 2020, DGL1's foreign representatives commenced a chapter 15 case (the "**2020 Chapter 15 Case**") in the Bankruptcy Court for the Southern District of New York (the "**2020 Court**") seeking recognition and enforcement of the 2020 Bermuda Proceeding, the 2020 Scheme and the related sanction order (the "**2020 Recognition Motion**"). The 2020 Court entered an order granting the 2020 Recognition Motion in the territorial jurisdiction of the United States on June 17, 2020 (the "**2020 Recognition Order**"). *In re Digicel Group One Limited*, No. 20-11207 (SCC) (Bankr. S.D.N.Y. June 17, 2020) [ECF No. 29]. In the 2020 Recognition Order, the 2020 Court found, among other things, that (a) the 2020 Bermuda Proceeding and its related provisional liquidation proceeding were "'foreign proceedings' within the meaning of section 101(23) of the Bankruptcy Code" and (b) "Bermuda [] is the country where [DGL1's] center of

main interests is located and, as such, the Bermuda Proceedings are entitled to recognition as 'foreign main proceedings' pursuant to section 1502(4) and 1517(b)(1) of the Bankruptcy Code." 2020 Recognition Order.

21. Ultimately, the 2020 Scheme was consummated on June 18, 2020, the 2020 Chapter 15 Case closed on April 20, 2021, and the Group was able to reduce its debt burden by almost $2 billion. *In re Digicel Group One Limited*, No. 20-11207 (SCC) (Bankr. S.D.N.Y. April 20, 2021) [ECF No. 39].

THE RESTRUCTURING

22. In July 2022, Digicel completed the sale of its Digicel Pacific Limited business which generated approximately $1.6 billion in gross proceeds (part of which was used to redeem existing indebtedness of the Group) (the "**Pacific Sale**"). However, notwithstanding the Pacific Sale, the Group still faced distress due in large part to deteriorating macroeconomic conditions in the markets where the Group operates its business and near-term debt maturities. As a result, as described in more detail below, in mid-2022, the Group and its Advisors (as defined below) began discussing strategic alternatives to address the Group's debt burden at both DGHL and the Debtors.

A. The DGHL Restructuring

23. As noted above, DGHL is also subject to a restructuring proceeding in Bermuda. In particular, after months of good-faith negotiations, DGHL, DL, DIFL and certain DGHL creditors and stakeholders entered into a restructuring support agreement (the "**DGHL RSA**") on May 28, 2023, which provided the material terms of a restructuring transaction of DGHL's outstanding indebtedness to be implemented through the DGHL Scheme.

24. In addition, the DGHL RSA provides for the compromise of existing intercompany debts owed by DGHL to DL and DIFL (the "**Intercompany Claims**"). Pursuant to the DGHL RSA, in connection with consummation of the DGHL Scheme, DL and DIFL agreed to enter into

a settlement agreement with DGHL to settle the Intercompany Claims for an agreed amount of cash and a share of the future proceeds from the Pacific Sale. As such, though the Schemes are not interconditional with the DGHL Scheme, the compromise of the Intercompany Claims as part of the DGHL Scheme is relevant to the assets of the Debtors.

25. The DGHL Scheme is expected to be consummated in the fourth quarter of 2023.

B. Events Leading to the Restructuring Transactions

26. Beginning in the summer of 2022, Digicel began to focus on addressing the March 1, 2023 maturity of the Existing DL Notes. As such Digicel commenced discussions with certain large holders of the Existing DL Notes. Shortly thereafter, Digicel began working with its advisors, Davis Polk & Wardwell LLP ("**Davis Polk**"), as counsel under New York law, Conyers Dill & Pearman Limited ("**Conyers**"), as counsel under the laws of Bermuda, and DC Advisory LLC (**"DCA**" and collectively, the "**Advisors**"), as investment banker, to evaluate various strategic alternatives to address the Existing DL Notes' upcoming maturity.

27. Among other things, Digicel, with the assistance of its Advisors, began to engage with an ad hoc group of holders of Existing Notes (the "**DL Ad Hoc Group**"), currently represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Greenhill & Co. LLC.

28. However, as negotiations were progressing with the DL Ad Hoc Group, in September 2022, economic and political conditions in Haiti—which at the time was Digicel's largest single market in terms of revenue—materially worsened, and in November 2022, Digicel announced that it "estimate[d] the financial impact [of the unrest] on Digicel Haiti in H2 FY23 (the six-month period ended March 31, 2023) would be significant. On a reported basis, assuming recent trends, Digicel estimated that as of March 31, 2023 its Adjusted EBITDA in Haiti would be

in the region of US$25-US$35 million compared to US$74 million in the prior half year."[19] The actual results for the period were in line with that forecast, and as a result the Group saw a significant reduction to the free cash flow it relied on to service the Group's debt. Consequently, the Group decided that a refinancing transaction that dealt only with DL's indebtedness would be insufficient, and a comprehensive restructuring of the Group's capital structure would be necessary for the long-term benefit of its various stakeholders and for the Group's financial and operational sustainability.

29. To that end, beginning in December 2022, in addition to the DL Ad Hoc Group, Digicel and its Advisors began engaging with an ad hoc group of Existing DIFL Secured Noteholders and Term Loan Lenders represented by Paul Hastings, LLP, ASW Law Limited, and Evercore Group LLC (the "**DIFL Secured Ad Hoc Group**"). The DIFL Secured Ad Hoc Group members hold primarily secured debt issued by DIFL. Furthermore, in February 2023, the DL Ad Hoc Group expanded to include GoldenTree Asset Management LP (as expanded, the "**PCG Ad Hoc Group**" and, together with the DIFL Secured Ad Hoc Group, the "**Ad Hoc Groups**") as part of an effort to focus on a more comprehensive recapitalization.

30. Ultimately, on June 27, 2023, the Debtors, the members of the Ad Hoc Groups, and certain other stakeholders entered into a Restructuring Support Agreement (as amended, restated, supplemented or otherwise modified from time to time, the "**DL/DIFL RSA**" and, the parties thereto, the "**DL/DIFL RSA Parties**"). On the same day, the Debtors issued a press release announcing entry into the DL/DIFL RSA (the "**DL/DIFL RSA Press Release**"), a true and correct copy of which is attached to the Foreign Representative Declaration as **Exhibit H**.

[19] *Digicel Provides Update on Trading Conditions in Haiti: H2 FY23 results for Digicel Haiti will be significantly impacted*, November 10, 2022. *See* Foreign Rep. Decl., **Exhibit G**.

31. The DL/DIFL RSA memorializes the material terms of the Restructuring Transactions to be implemented through the Schemes and the Proxy Solicitation and Exchange Offer, as described in more detail herein. The Restructuring Transactions contemplate a refinancing and equitization of the DL and DIFL indebtedness whereby DHL effectively becomes the parent holding company of the Group. In particular, the Restructuring Transactions provide (collectively, the "**Scheme Consideration**"):

a. In exchange for the release of all claims arising out of the Existing DIFL Secured Notes Indenture and related documents, each Existing DIFL Secured Noteholder will receive its pro rata share of (i) new secured notes issued by DIFL in a principal amount as set forth in the Explanatory Statement (the "**New DIFL Secured Notes**") and (ii) cash equal to the aggregate amount of all accrued and unpaid interest outstanding on the Existing DIFL Secured Notes from the last interest payment date to the Scheme Effective Date (as defined in the DIFL Scheme);

b. In satisfaction of all claims arising out of the Credit Agreement and related documents, each Term Loan Lender will receive its pro rata share of (i) new obligations under an amended and restated Credit Agreement in a principal amount as set forth in the Explanatory Statement (the "**New DIFL Term Loan**") and (ii) cash equal to the accrued and unpaid cash interest outstanding on the Term Loans from the last interest payment date to the Scheme Effective Date;

c. DHL will conduct a rights offering (the "**Rights Offering**") of (i) up to $110 million (the "**Offering Amount**") of new convertible preferred shares (the "**Exit Preferred Shares**") and (ii) 20% of the DHL Common Shares (as defined

below) (subject to the Rights Offering Equity Adjustment (as defined below)) (the "**Subscription DHL Common Shares**" and, the rights to subscribe thereto and to the Exit Preferred Shares, collectively, the "**Equity Subscription Rights**"). In the event that the Offering Amount is less than $110 million, DHL Common Shares will be reallocated to Existing DL Noteholders and Existing DIFL Subordinated Noteholders as part of their respective consideration, which will, in turn, reduce the amount of such Subscription DHL Common Shares offered in connection with the Rights Offering (the reallocation of such Subscription DHL Common Shares, the "**Rights Offering Equity Adjustment**"). In addition, pursuant to that certain Backstop Commitment Agreement, dated June 27, 2023, the Rights Offering is "backstopped" or underwritten by certain members of the PCG Ad Hoc Group (the "**Backstop Parties**") in the event the Rights Offering is either undersubscribed, or if subscribers fail to fund their subscription monies on closing. In consideration for agreeing to backstop the Rights Offering, the Backstop Parties will receive a premium equal to $11 million, payable in Exit Preferred Shares and 2.0% of DHL Common Shares (the "**Backstop Payment**"). The proceeds of the Rights Offering will be used to refinance the Bridge Facilities and provide adequate liquidity for the Group on a go-forward basis;

d. In exchange for the release of all claims arising out of the Existing DIFL Unsecured Notes Indenture and related documents, each holder of Existing DIFL Unsecured Notes will receive its pro rata share of (i) new unsecured notes to be issued by a newly formed entity, Digicel Midco Limited, that will become

a wholly owned and direct subsidiary of DHL in a principal amount as set forth in the Explanatory Statement (the "**Take-Back Notes**") and (ii) cash equal to the accrued and unpaid cash interest outstanding on the Existing DIFL Unsecured Notes from the last interest payment date to the Scheme Effective Date;

e. In exchange for the release of all claims arising out of the Existing DL Notes Indenture and related documents, holders of the Existing DL Notes will receive their pro rata share[20] of (i)(A) 48.78% of the common shares of DHL (the "**DHL Common Shares**") (subject to dilution by the DL Secured Notes Commitment Payment (as defined below) and which may be either voting or non-voting shares at the election of each Existing DL Noteholder) and (B) 78.90% of the Rights Offering Equity Adjustment and (ii) the Equity Subscription Rights;

f. In exchange for the release of all claims arising out of the DIFL Subordinated Notes Indenture and related documents, holders of the Existing DIFL Subordinated Notes will receive their pro rata share[21] of (i)(A) 13.05% of the DHL Common Shares (subject to dilution by the DIFL Subordinated Notes Commitment Payment (as defined below) and which may be either voting or non-voting shares at the election of each Existing DIFL Subordinated Noteholder) and (B) 21.10% of the Rights Offering Equity Adjustment and (ii) the Equity Subscription Rights; and

[20] Based on the value of such claims as of August 15, 2023 (including accrued interest thereon).

[21] Based on the value of such claims as of August 15, 2023 (including accrued interest thereon).

g. The Take-Back Notes, the New DIFL Secured Notes, the Exit Preferred Shares, and the DHL Common Shares will all be issued on substantially the same terms as those set forth in Appendices I – IV to the Solicitation Statement, as applicable.

32. In addition to the Scheme Consideration, certain holders that signed the DL/DIFL RSA (consisting of the members of the PCG Ad Hoc Group, the DIFL Secured Steering Committee (as defined in the DL/DIFL RSA) and Diameter Capital Partners L.P. ("**Diameter**")) are entitled to the following work payments (the "**Work Payments**"), as applicable, in consideration for their time and expense in working with the Debtor to formulate a restructuring solution:[22]

a. in respect of the Existing DL Notes, 4.87% of DHL Common Shares to be issued and outstanding on the Scheme Effective Date, payable to members of the PCG Ad Hoc Group;

b. in respect of the Existing DIFL Unsecured Notes, 2.00% of the aggregate principal amount of the Existing DIFL Unsecured Notes as of the Scheme Effective Date, payable in kind through the issuance on a dollar-for-dollar basis of Take-Back Notes to the members of the PCG Ad Hoc Group and Diameter based on the agreed proportions set out in the DL/DIFL RSA;

c. in respect of each of the Existing DIFL Secured Notes and the Term Loans, 1.932% of the aggregate principal amount of Existing DIFL Secured Notes as of the Scheme Effective Date plus the Term Loans as of the Scheme Effective

[22] Further, pursuant to the DL/DIFL RSA, the Debtors have also agreed to pay the fees, costs, and expenses of the professional advisors to the PCG Ad Hoc Group and DIFL Secured Ad Hoc Group incurred in connection with the Restructuring Transactions and Schemes (the "**Professional Fees**").

Date, payable in kind through the issuance on a dollar-for-dollar basis of either (i) New Secured Notes or (ii) New Term Loans, as applicable, each at the election of members of the PCG Ad Hoc Group, the members of the DIFL Secured Steering Committee and Diameter (based on the agreed proportions set out in the DL/DIFL RSA) as the holders eligible to receive such Work Payment; and

d. in respect of the Existing DIFL Subordinated Notes, 1.30% of DHL Common Shares to be issued and outstanding on the Scheme Effective Date, payable to the members of the PCG Ad Hoc Group.

33. Each of the Solicitation Statement and the Exchange Offer Memorandum (each as described below) provided for a commitment payment to the Existing DL Noteholders and Existing DIFL Noteholders (as applicable) that provided Instructions (as defined below) to the Information Agent by September 11, 2023, at 5:00 p.m. (prevailing Eastern Time) (the "**Commitment Payment Election Deadline**"). Holders of the Term Loans were also entitled to receive a commitment payment if they became party to the DL/DIFL RSA by the Commitment Payment Election Deadline. The Debtors view the commitment payments as an important tool, consistent with market practice, for garnering "up-front" support for the Restructuring Transactions. The commitment payments will be made as follows:

a. in respect of the Existing DL Notes, 0.0000025% of DHL Common Shares for each $1,000 principal amount of Existing DL Notes;

b. in respect of the Existing DIFL Subordinated Notes, 0.0000025% of DHL Common Shares for each $1,000 principal amount of DIFL Subordinated Notes;

c. in respect of the Existing DIFL Unsecured Notes, $50 principal amount of Take-Back Notes per $1,000 principal amount of Existing DIFL Unsecured Notes; provided that, upon the agreement of (i) the Debtors and (ii) the holders entitled to receive the Existing DIFL Unsecured Notes Commitment Payment that collectively hold or control more than 50% of the aggregate outstanding principal amount of the Existing DIFL Unsecured Notes held by all holders entitled to receive the Existing DIFL Unsecured Notes Commitment Payment, such commitment payment may be reduced or waived;

d. in respect of the Existing DIFL Secured Notes, $50 principal amount of New Secured Notes per $1,000 principal amount of Existing DIFL Secured Notes; provided that, upon the agreement of (i) the Debtors and (ii) the holders entitled to receive the Existing DIFL Secured Notes Commitment Payment that collectively hold or control more than 50% of the aggregate outstanding principal amount of the Existing DIFL Secured Notes held by all holders entitled to receive the Existing DIFL Secured Notes Commitment Payment, such commitment payment may be reduced or waived; and

e. in respect of the Term Loans, $50 principal amount of New Term Loans per $1,000 principal amount of Term Loans; provided that, upon agreement of (i) the Companies and (ii) the holders entitled to receive the DIFL Term Loan Commitment Payment that collectively hold or control more than 50% of the aggregate outstanding principal amount of the Term Loans held by all holders entitled to receive the Term Loan Commitment Payment, such commitment payment may be reduced or waived.

34. In sum, the Restructuring Transactions contemplated by the DL/DIFL RSA are complex and heavily negotiated. They involved balancing the Group's interests with those of creditors with claims that varied in their level of structural and contractual priority, guarantees, and collateral packages. The comprehensive restructuring that the Group has negotiated in the DL/DIFL RSA and the DGHL RSA represents a compromise between numerous constituencies and addresses more than $4.4 billion of funded indebtedness.

C. Solicitation Statement and Offering Memorandum

35. On August 21, 2023, the Debtors launched a proxy solicitation and circulated a solicitation statement describing the Restructuring Transactions to the Existing DL Noteholders, Existing DIFL Unsecured Noteholders, and Existing DIFL Secured Noteholders (the "**Solicitation Statement**"). On the same day, DIFL launched an exchange offer by circulating an exchange offer memorandum and consent solicitation statement describing the Restructuring Transactions to the Existing DIFL Subordinated Noteholders (the "**Exchange Offer Memorandum**"). Both the Solicitation Statement and the Exchange Offer Memorandum describe the proposed economic effect of the Schemes on DL Noteholders and/or DIFL Noteholders, including how such holders' claims arising under the Existing Notes would be compromised, and the consideration that would become due to holders in exchange for such compromise under the respective Scheme. True and correct copies of the Solicitation Statement and Exchange Offer Memorandum are attached to the Foreign Representative Declaration as **Exhibit I** and **Exhibit J**, respectively.

36. Because the Restructuring Transactions implicate multiple debt instruments across the Group's capital structure, the purpose of the Solicitation Statement and the Exchange Offer Memorandum were for the Debtors to solicit proxies for the proposed Schemes (and thereby determine at an early stage the level of overall creditor support) using a method familiar to holders of instruments such as the Existing Notes (i.e., a solicitation/consent process through the

Depository Trust Company ("**DTC**")). By delivering their proxy and tendering their Existing Notes (other than the Existing DIFL Subordinated Notes) pursuant to the Solicitation Statement or, in the case of holders of the Existing DIFL Subordinated Notes, by delivering their proxy and tendering their Existing DIFL Subordinated Notes pursuant to the Exchange Offer Memorandum, Existing DL Noteholders and/or Existing DIFL Noteholders (as the case may be) were deemed to unconditionally deliver instructions for the Information Agent, effective immediately, to act as their true and lawful agent, attorney-in-fact and proxy with respect to their Existing Notes for the purpose of taking all steps necessary, including executing all documents necessary, as may be required by applicable law, (a) to cause their Existing Notes to be assigned, transferred and exchanged and (b) in such capacity as true and lawful agent, attorney-in-fact and proxy to irrevocably vote in favor (including, if required, attending a meeting and voting on behalf their Existing Notes) of the relevant Scheme ("**Instructions**").

37. As of the Commitment Payment Election Deadline, holders of approximately (i) 96.88% of the Existing DL Notes, (ii) 99.06% of the Existing DIFL Subordinated Notes, (iii) 99.54% of the Existing DIFL Unsecured Notes, and (iv) 99.33% of the Existing DIFL Secured Notes, by value, submitted Instructions to the Information Agent to vote on their behalf in favor of the Schemes. In addition, holders of approximately 97.37% by value of the Term Loans had appointed the Information Agent to vote on their behalf in favor of the Schemes by joining the DL/DIFL RSA by the Commitment Payment Election Deadline.

D. The Bermuda Proceedings

38. On September 12, 2023, the Debtors commenced the Bermuda Proceedings by issuing a composite practice statement letter, a true and correct copy of which is attached to the Foreign Representative Declaration as **Exhibit K** (the "**Practice Statement Letter**"), in accordance with Bermuda Court Circular N.18 of 2007 to (i) the beneficial holders of the Existing

DL Notes (the "**DL Scheme Creditors**") and (ii) the beneficial holders of the Existing DIFL Notes and the Term Loan Lenders (the "**DIFL Scheme Creditors**" and, together with the DL Scheme Creditors, the "**Scheme Creditors**") announcing the Debtors' intention to file schemes of arrangement under the Bermuda Companies Act. The same day, or promptly thereafter, the Practice Statement Letter was (a) sent by the Information Agent to (i) DTC via email, (ii) DTC Participants via email, and (iii) DTC and the DTC Participants via hard copy and with sufficient copies and instructions to forward such documents to the Existing Noteholders, (b) sent by the Existing Notes Trustee to holders of Existing Notes through DTC, (c) posted by the Debtors through a posting memorandum, to a secure Intralinks webpage to which all DIFL Term Loan Lenders have access, and (d) posted on the Debtors' scheme website: https://dm.epiq11.com/DIFL-DL (the "**Scheme Website**"). Scheme Creditors may obtain access to the Scheme Website by emailing tabulation@epiqglobal.com, with reference to "DIFL Scheme" or "DL Scheme," as applicable, in the subject line. Scheme Creditors must provide proof of their holdings to receive access to the Scheme Website. Once access is obtained, Scheme Creditors may download documents relating to the Schemes from the Scheme Website.

39. On September 14, 2023, (i) Debtor DL issued an originating summons on behalf of DL and (ii) Debtors DIHL and DIFL issued originating summons on behalf of DIFL and DIHL to the Bermuda Court, true and correct copies of which are attached to the Foreign Representative Declaration as **Exhibit L-1 and Exhibit L-2**, seeking, among other things, entry of an order directing the Debtors to convene meetings of the Scheme Creditors to, among other things, vote on the Schemes (the "**Scheme Meetings**").

40. On September 19, 2023, the boards of directors of each Debtor duly adopted board resolutions (the "**Resolutions**"), true and correct copies of which are attached to the Foreign

Representative Declaration as **Exhibit M**, which, among other things, permit the Debtors to (a) propose the Schemes, (b) appoint Lawrence Hickey as the Foreign Representative, and (c) commence the Chapter 15 Cases.

41. On the same day, a substantially finalized explanatory statement (the "**Explanatory Statement**") was submitted to the Bermuda Court along with other evidence. The Explanatory Statement includes copies of the Schemes in Part F thereof.

42. A hearing before the Bermuda Court was held on September 22, 2023, following which the Bermuda Court (i) entered a convening order with respect to the DL Scheme that convened the DL Scheme Meeting and appointed Lawrence Hickey as the DL's Foreign Representative (the "**DL Convening Order**") and (ii) entered a convening order with respect to the DIFL Scheme that convened the DIFL Scheme Meetings and appointed Lawrence Hickey as DIFL and DIHL's Foreign Representative (the "**DIFL Convening Order**" and, together with the DL Convening Order, the "**Convening Orders**"). True and correct copies of the DL Convening Order and the DIFL Convening Order are attached to the Foreign Representative Declaration as **Exhibit N-1 and Exhibit N-2**, respectively. The Scheme Meetings will be held consecutively on October 18, 2023, or such later date as the Debtors may decide, but not more than three months from the date of the Convening Order. DL Convening Order ¶ 3; DIFL Convening Order ¶ 3.

43. On October 3, 2023, and in accordance with the Convening Orders, the Information Agent sent a notice, a true and correct copy of which is attached to the Foreign Representative Declaration as **Exhibit O-1** (the "**DL Scheme Meetings Notice**"), to the DL Scheme Creditors (a) notifying them of the Scheme Meetings and (b) delivering the final version of the Explanatory Statement through (i) the DTC Participants, with sufficient copies and instructions to forward such

documents to the Existing DL Noteholders, and (ii) publication of the Scheme Meetings Notice and the Explanatory Statement on the Scheme Website.

44. On October 3, 2023, and in accordance with the Convening Orders, (a) the Information Agent sent a notice, a true and correct copy of which is attached to the Foreign Representative Declaration as **Exhibit O-2** (the "**DIFL Scheme Meetings Notice**"), to the DIFL Scheme Creditors (i) notifying them of the Scheme Meetings and (ii) delivering the final version of the Explanatory Statement through (x) the DTC Participants, with sufficient copies and instructions to forward such documents to the Existing DIFL Noteholders, and (y) publication of the Scheme Meetings Notice and the Explanatory Statement on the Scheme Website and (b) the Debtors caused the DIFL Scheme Meeting Notice and the final version of the Explanatory Statement to be posted to a secure Intralinks site available to all Term Loan Lenders.

45. A true and correct copy of the Explanatory Statement sent to Scheme Creditors is attached to the Foreign Representative Declaration as **Exhibit P**.

46. The provisions of the Convening Orders ensure that the Scheme Creditors will be properly notified of the Scheme Meetings and will have the opportunity to attend, be heard, and raise questions regarding and object to the Schemes at the proposed Scheme Meetings. All Scheme Creditors will also have the opportunity to vote at the Scheme Meetings, subject to compliance with the applicable procedures specified in the Convening Orders, either in person, by authorized representative (if a corporate entity), or by proxy and to ask questions regarding the proposed Schemes. DIFL Convening Order ¶ 10; DL Convening Order ¶ 10. The Convening Orders also specify that the Scheme Meetings will be chaired by John Bosacco, a managing director at DCA. DIFL Convening Order ¶ 14; DL Convening Order ¶ 14.

47. At the Scheme Meetings, votes will be held to determine whether the Scheme Creditors (in each class thereof) that are present and voting in person or by proxy approve the Schemes by greater than a majority in number representing at least 75% in value of the Scheme Creditors present and voting. If the Scheme Creditors do not approve the Schemes by the requisite majorities described in the foregoing sentence, the Schemes cannot be sanctioned by the Bermuda Court and will not take effect. Foreign Law Decl. ¶ 54.

48. If the Schemes are approved at the Scheme Meetings, a hearing before the Bermuda Court seeking sanction and approval of the Schemes (the "**Sanction Hearing**") is expected to be held on or about November 3, 2023. The provisions of the Convening Orders ensure that the Scheme Creditors and any other creditors of the Debtors will have the opportunity to be heard and raise questions and objections to the Schemes at the Sanction Hearing. Further, Conyers will appear at the Sanction Hearing, in front of the Bermuda Court on the Debtors' behalf.

49. Assuming the Bermuda Court deems it appropriate to enter orders sanctioning the Schemes following the Sanction Hearing (the "**Sanction Orders**"), the Sanction Orders are expected, among other things, to (a) sanction and approve consummation of the Schemes and the transactions contemplated therein (the "**Restructuring Transactions**") and (b) authorize and effectuate the Releases (as defined below) set forth in the Schemes. Foreign Law Decl. ¶ 56. Upon delivery of the Sanction Orders to the Bermuda Registrar of Companies and satisfaction of the Schemes' other conditions precedent, including entry of a chapter 15 recognition order pursuant to the Chapter 15 Cases, the Schemes will become effective and thereby binding on all Scheme Creditors. *Id.* Accordingly, the Debtors and the Scheme Creditors intend to consummate the Restructuring Transactions shortly after the Sanction Orders and an order of this court (this

"**Court**") are entered recognizing and enforcing the Schemes under chapter 15 of the Bankruptcy Code.

E. The Schemes of Arrangement

50. The holders who have submitted Instructions to the Information Agent in favor of the Schemes do not represent all holders of the Existing Notes and Term Loan Lenders. Therefore, the purpose of the Schemes is to effect a compromise and arrangement, pursuant to the Bermuda Companies Act, between the Debtors and the Scheme Creditors in relation to all claims of a Scheme Creditor against the Debtors arising directly or indirectly out of, in relation to and/or in connection with the Scheme Claims. If the Schemes become effective, all of the Scheme Creditors (irrespective of whether or not they voted in favor of the Schemes) will be bound by the terms of the Schemes and the Schemes will alter the rights of all of the Scheme Creditors. Consummation of the Schemes is dependent on the satisfaction or waiver of certain condition precedent set forth therein, including entry of the Recognition Order. The Schemes are interconditional.

51. The Schemes provide for releases. Broadly, the claims released in connection with the Schemes include (a) the releases of the Scheme Claims of the Scheme Creditors, the Depository Nominee, the Administrative Agent, and the Existing Notes Trustee, (b) the cancellation of the Existing Notes, and (c) the releases covered by the deed of release, substantially in the form of the Deed of Release attached to the Explanatory Statement as Appendix 7 (the "**Deed of Release**"), which is to be entered into on the Scheme Effective Date (together, the "**Releases**"). Among others, the Released Parties include the Existing Noteholders, the Term Loan Lenders, and the Supporting Shareholder. Importantly, however, the Releases do not release (i) the Group from (A) their obligations to implement and consummate the Schemes or (B) any claims other than claims (including the Existing Notes) that are compromised under the Schemes or (ii) the Released Parties

(as defined in the Deed of Release) from any claims arising out of fraud, gross negligence, willful misconduct, willful default, or dishonesty.

CONNECTIONS TO THE UNITED STATES AND THIS DISTRICT

52. The Debtors have property in the United States, including in this jurisdiction, as follows:

a. DL: DL's property in New York includes an interest in cash held by Davis Polk as a retainer for Davis Polk's services in connection with the Bermuda Proceedings and the Chapter 15 Cases, in a bank account located in Manhattan, New York;

b. DIHL: DIHL's property in New York includes an interest in cash held by Davis Polk as a retainer for Davis Polk's services in connection with the Bermuda Proceedings and the Chapter 15 Cases, again in a bank account located in Manhattan, New York; and

c. DIFL: DIFL's property in New York includes (i) approximately $10,916,000.00 held in a bank account with JPMorgan as of October 11, 2023, which is located in the Borough of Manhattan in the City of New York (the "**U.S. Bank Account**"), and (ii) an interest in cash held by Davis Polk as a retainer for Davis Polk's services in connection with the Bermuda Proceedings and the Chapter 15 Cases, again in a bank account located in Manhattan, New York.

53. Additionally, the Existing Notes Indentures and the Credit Agreement are governed by New York law and contain provisions submitting the parties to the jurisdiction of any New York state or United States federal court sitting in the Borough of Manhattan in the City of New York. Moreover, each of the Existing Notes Indentures and the Credit Agreement contains

a governing law clause selecting New York law as the governing law, and the issuers and guarantors of the Existing Notes and Term Loans expressly consented to New York jurisdiction and venue in the respective Existing Notes Indentures and Credit Agreement.

BASIS FOR RELIEF REQUESTED

54. The Court should grant the Motion and recognize the Bermuda Proceedings as the foreign main proceedings for the Debtors. Chapter 15 of the Bankruptcy Code is designed to, among other things, protect and maximize the value of a foreign debtor's assets and assist foreign representatives—such as the Foreign Representative—in the performance of their duties. In short, the central goal of chapter 15 is to "provide effective mechanisms for dealing with cases of cross-border insolvency while promoting international cooperation, legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of debtors' assets, and the rescue of financially troubled businesses." *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 132 (2d Cir. 2013) (citing 11 U.S.C. § 1501(a)) (internal quotation marks omitted). Consistent with these principles, the Foreign Representative commenced the Chapter 15 Cases to obtain recognition of the Bermuda Proceedings and recognition and enforcement of the Sanction Orders and Schemes within the territorial jurisdiction of the United States.

55. As set forth below, each of the procedural requirements for recognition under section 1515 of the Bankruptcy Code has been satisfied. The Foreign Representative is the duly appointed "foreign representative" of the Bermuda Proceedings with respect to the Debtors, and it is well established that Bermuda schemes of arrangement proceedings are considered "foreign proceedings" for the purposes of chapter 15. *Infra* ¶ 107. Further, the Debtors' COMI (as defined below) is in Bermuda—their registered offices are in Bermuda, they are organized under the laws of Bermuda, and their restructuring activities are centralized in Bermuda. Foreign Rep. Decl. ¶ 10.

56. In the alternative, although the Foreign Representative is confident that the Bermuda Proceedings constitute foreign main proceedings with respect to each Debtor within the definition set forth in section 1502(4) of the Bankruptcy Code, the Foreign Representative also seeks recognition of the Bermuda Proceedings as foreign nonmain proceedings with respect to the Debtors, if the Court determines that there is not sufficient basis to recognize the Bermuda Proceedings as foreign main proceedings. In such event, for the reasons set out below, the Debtors are eligible for nonmain recognition and related relief, including the imposition of a stay in accordance with sections 1521(a)(1) and (2) of the Bankruptcy Code, to the same extent such stay would be granted under section 1520(a) of the Bankruptcy Code, to ensure a comprehensive restructuring.

57. For the reasons set forth below and in the Supporting Documents, the relief sought herein is appropriate under chapter 15.

A. The Debtors Are Eligible for Chapter 15 Relief

58. To be eligible for chapter 15 relief, the Debtors must meet the general eligibility requirements under section 109(a) of the Bankruptcy Code as well as the more specific eligibility requirements under section 1517(a) of the Bankruptcy Code. In addition, the petition for recognition must meet the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4). The Debtors meet all such eligibility requirements.

1. The Debtors Meet Eligibility Requirements of Section 109(a) of the Bankruptcy Code

59. Section 103(a) of the Bankruptcy Code provides that chapter 1, which includes section 109(a), "appl[ies] in a case under chapter 15." 11 U.S.C. § 103(a). Thus, the Debtors must meet the eligibility requirements of section 109(a) of the Bankruptcy Code to obtain relief under chapter 15. Section 109(a) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or

property in the United States, or a municipality, may be a debtor under this title." 11 U.S.C. § 109(a). Under section 109(a), a foreign debtor must reside or have a domicile, a place of business, or property in the United States to be eligible to file a chapter 15 petition. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013).

60. Section 109(a) of the Bankruptcy Code does not require a specific amount or dollar value of property in the United States, nor does it indicate when or for how long such property must have a U.S. situs. *See, e.g.*, *In re Berau Cap. Res. Pte Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015). Courts have accordingly held that attorney retainers deposited in New York satisfy the "property in the United States" eligibility requirement of section 109(a) of the Bankruptcy Code. *See, e.g.*, *In re Poymanov*, 571 B.R. 24, 30 (Bankr. S.D.N.Y. 2017) ("A debtor's funds held in a retainer account in the possession of counsel to a foreign representative constitute property of the debtor in the United States and satisfy the eligibility requirements of section 109(a)."); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 372–374 (Bankr. S.D.N.Y. 2014) (noting the "line of authority that supports the fact that prepetition deposits or retainers can supply 'property' sufficient to make a foreign debtor eligible to file in the United States" and holding that cash in a client trust account maintained by U.S. counsel to the foreign representative satisfied section 109(a) (citing *In re Cenargo Int'l PLC*, 294 B.R. 571, 603 (Bankr. S.D.N.Y. 2003)); *In re Yukos Oil Co.*, 321 B.R. 396, 401–03 (Bankr. S.D. Tex. 2005); *In re Glob. Ocean Carriers*, 251 B.R. 31, 39 (Bankr. D. Del. 2000).

61. Additionally, courts in this District have found that contracts (e.g., indentures) governed by New York law or contracts containing provisions submitting parties to the jurisdiction of New York state and federal courts give rise to property rights supporting debtor eligibility under section 109(a) of the Bankruptcy Code. *See, e.g.*, *In re Avanti Commc'ns*, 582 B.R. 603, 610–611

(Bankr. S.D.N.Y. 2018) (holding that the debtor's indenture "is governed by New York law, which separately satisfies the 'property in the United States' requirement for eligibility to file a chapter 15 case under section 109(a) of the Bankruptcy Code."); *Berau*, 540 B.R. at 83–84 ("The Court concludes that the presence of the New York choice of law and forum selection clauses in the Berau indenture satisfies the section 109(a) 'property in the United States' eligibility requirement.").

62. Here, the Debtors satisfy the eligibility requirement of section 109(a) because the Debtors have property in the United States, in this jurisdiction. Specifically, immediately prior to the Petition Date, the Debtors held approximately $10,916,000.00 in the U.S. Bank Account and have an interest in certain funds deposited with its U.S. counsel, Davis Polk, as a retainer for its services in connection with the Bermuda Proceedings and the Chapter 15 Cases, which funds are held in a client trust account in the Borough of Manhattan in the City of New York, New York. Foreign Rep. Decl. ¶ 49. Additionally, the Existing Notes Indentures and Credit Agreement are governed by New York law and contain provisions submitting the parties to the jurisdiction of New York state and federal courts. *Id.* at ¶ 50.

63. Accordingly, the Debtors meet the eligibility requirements of section 109(a) of the Bankruptcy Code.

2. The Debtors Meet Eligibility Requirements of Section 1517(a) of the Bankruptcy Code

64. Section 1517(a) of the Bankruptcy Code provides that, after notice and a hearing, "an order recognizing a foreign proceeding shall be entered if . . . (1) such foreign proceeding for which recognition is sought is a foreign main proceeding . . . within the meaning of section 1502; (2) the foreign representative applying for recognition is a person or body; and (3) the petition meets the requirements of section 1515." 11 U.S.C. § 1517(a). Each of those requirements has been satisfied for the reasons set forth below.

i. The Bermuda Proceedings Are "Foreign Proceedings"

65. The Bermuda Proceedings satisfy the general definition of "foreign proceedings" as set forth in section 101(23) of the Bankruptcy Code. Section 101(23) requires that a "foreign proceeding" be: (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); *see also In re ABC Learning Ctrs. Ltd.*, 728 F.3d 301, 308 (3d Cir. 2013); *In re Irish Bank Resolution Corp. (In Special Liquidation)*, 2014 Bankr. LEXIS 1990, *39-40 (Bankr. D. Del. Apr. 30, 2014). The Bankruptcy Code defines "foreign court" as a "judicial or other authority competent to control or supervise a foreign proceeding." 11 U.S.C. § 1502(3).

66. *First*, the Bermuda Proceedings are collective judicial proceedings relating to insolvency or adjustment of debt. Foreign Law Decl. ¶ 45. On September 12, 2023, the Debtors commenced the Bermuda Proceedings in the Bermuda Court, which court has exclusive jurisdiction over matters relating to the claims being restructured. *Id.* at ¶ 48. Moreover, each of the Bermuda Proceedings is "collective" in that each proceeding administers the claims of all creditors whose claims are being restructured in a single proceeding. *Id.* at ¶ 22.

67. *Second*, the Bermuda Proceedings are pending in a foreign country—Bermuda—under a law relating to insolvency, the Bermuda Companies Act (the "**Bermuda Companies Act**"). *Id.* at ¶ 45.

68. *Third*, through the Bermuda Proceedings, the Debtors' actions vis-à-vis the Restructuring Transactions, are subject to the supervision of the Bermuda Court. *Id.* at ¶ 25.

69. *Fourth*, the Bermuda Proceedings are for the purpose of restructuring the Existing Indebtedness. Foreign Rep. Decl. ¶ 47. The Bermuda Proceedings are intended to, among other

things, protect the Debtors so that they may continue to pursue an orderly restructuring pursuant to the Schemes.

70. Furthermore, it is well established by this Court that Bermuda schemes of arrangement under the Bermuda Companies Act (and Bermuda provisional liquidations) constitute "foreign proceedings." *See, e.g.*, *In re Markel CATCo Reinsurance Fund LTD.*, No. 21-11733 (LGB) (Bankr. S.D.N.Y. Nov. 4, 2021) [ECF No. 23] (recognizing a Bermuda scheme of arrangement); *In re Digicel Group One Ltd.*, No. 20-11207 (SCC) (Bankr. S.D.N.Y. June 15, 2020) [ECF No. 29] (hereinafter *Digicel I*) (same).[23]

ii. The Foreign Representative Is a Proper "Foreign Representative"

71. The Foreign Representative is the proper "foreign representative" of Debtors, thereby satisfying sections 101(24) and 1517(a)(2) of the Bankruptcy Code. Section 101(24) of the Bankruptcy Code provides that a foreign representative be a person authorized "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). Moreover, Bankruptcy Code section 1516(a) provides that a bankruptcy court may presume that the person petitioning for chapter 15 recognition is a foreign representative if the decision or certificate from the foreign court indicates. *See id.* § 1516(a).

72. Here, the Foreign Representative is an individual who has been duly appointed by each Debtor's board of directors, pursuant to the relevant corporate laws, as its foreign

[23] It is similarly well established by this Court that other Bermuda restructuring proceedings constitute "foreign proceedings." *See, e.g.*, *In re Culligan Ltd.*, No. 20-12192 (JLG) (Bankr. S.D.N.Y. July 15, 2021) [ECF No. 60] (recognizing Bermuda liquidation proceedings as "foreign proceedings"); *In re VL Assurance (Bermuda) Ltd.*, No. 21-10682 (MG) (Bankr. S.D.N.Y. May 17, 2021) [ECF No. 13] (same); *In re PB Life & Annuity Co.*, No. 20-12791 (SCC) (Bankr. S.D.N.Y. Jan. 5, 2021) [ECF No. 33] (recognizing Bermuda provisional liquidation); *In re George's Bay Limited*, No. 20-10897 (Bankr. S.D.N.Y. May 28, 2020) [ECF No. 23] (recognizing Bermuda liquidation proceeding); *In re Spencer Capital Holdings Ltd.*, No. 20-12287 (JLG) (Bankr. S.D.N.Y. Nov. 24, 2020) [ECF No. 16] (recognizing Bermuda provisional liquidation); *In re PDV Ins. Co.*, No. 18-12216 (MEW) (Bankr. S.D.N.Y. Aug. 30, 2018) [ECF No. 11] (same).

representative in accordance with section 101(24) of the Bankruptcy Code and to commence the Chapter 15 Cases. *See* Foreign Rep. Decl., **Exhibit M**. Moreover, pursuant to the Convening Orders, the Foreign Representative was authorized by the Bermuda Court to act as the Debtors' foreign representative and to seek relief under chapter 15 of the Bankruptcy Code. DL Convening Orders ¶ 17-18; DIFL Convening Orders ¶ 17-18.

73. Courts in this District routinely recognize the appointment of foreign representatives in similar manners as acceptable for the purposes of commencing chapter 15 cases. *See, e.g.*, *In re ODN I Perfurações Ltda.*, No. 23-10557 (DSJ) (Bankr. S.D.N.Y. May 4, 2023) [ECF No. 24] (finding that a person appointed by each of the chapter 15 debtors' board of directors or shareholders, as applicable, was the duly appointed foreign representative within the meaning of section 101(24) of the Bankruptcy Code); *In re Andrade Gutierrez Engenharia S.A.*, No. 22-11425 (MG) (Bankr. S.D.N.Y. Dec. 2, 2022) [ECF No. 40] (same); *U.S.J. - Açúcar e Álcool S.A.*, No. 22-10320 (DSJ) (Bankr. S.D.N.Y. April 14, 2022) [ECF No. 21] (same); *In re Samarco Mineração S.A. – Em Recuperação Judical*, No. 21-10754 (LGB) (Bankr. S.D.N.Y. May 31, 2021) [ECF No. 22] (same); *In re Odebrecht Engenharia e Construção S.A.*, No. 20-12741 (MEW) (Bankr. S.D.N.Y. Dec. 30, 2020) [ECF No. 15] (same); *In re Digicel I* [ECF No. 29] (finding that a foreign representative appointed by (a) the debtor's board of directors and (b) Bermuda court order was the duly appointed foreign representative); *In re SPhinX, Ltd.*, 351 B.R. 103, 116–17 (Bankr. S.D.N.Y. 2006), *aff'd sub nom. Krys v. Official Comm. of Unsecured Creditors of Refco Inc. (In re SPhinX Ltd.)*, 371 B.R. 10 (S.D.N.Y. 2007) (holding that section 101(24) of Bankruptcy Code was satisfied where foreign representatives submitted a "copy of the Cayman Court's order appointing them to administer the [d]ebtors' winding up under [Cayman law] and authorizing their commencement of these chapter 15 cases").

iii. The Petitions Were Properly Filed Under Sections 1504 and 1509 and Meet the Requirements of Section 1515 and Bankruptcy Rule 1007(a)(4)

74. The third and 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). Here, all of those procedural requirements are satisfied.

75. *First*, the Foreign Representative duly and properly commenced the Chapter 15 Cases in accordance with sections 1504 and 1509(a) of the Bankruptcy Code by filing the *Official Form 401 Petitions* (collectively, the "**Petitions**") with all the documents and information required by section 1515(b) and (c). *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.").

76. *Second*, in accordance with section 1515(b)(1)–(2) and (d) of the Bankruptcy Code, the Foreign Representative has submitted evidence of the existence of the Bermuda Proceedings and the appointment of the Foreign Representative as foreign representative thereof. *See* Foreign Rep. Decl., **Exhibits P-1 and P-2**.

77. *Third*, in accordance with section 1515(c) of the Bankruptcy Code, the Bankruptcy Disclosures filed contemporaneously herewith contain a statement that the Bermuda Proceedings are the only foreign proceedings currently pending with respect to the Debtors other than the DGHL Chapter 15 Proceeding (as defined below).[24]

[24] DGHL, the current ultimate holding company of the Group, is currently subject to a separate scheme of arrangement pending before the Bermuda Court (the "**DGHL Scheme**") and chapter 15 proceeding captioned at *Digicel Group Holdings Limited*, No. 20-11479 (JPM) (the "**DGHL Chapter 15 Proceeding**"). The DGHL Scheme is expected to be consummated in the fourth quarter of 2023. The Schemes are not conditioned upon consummation of the DGHL Scheme.

78. *Fourth*, with the filing of the Bankruptcy Disclosures contemporaneously herewith, the Foreign Representative has also satisfied the additional filing requirements set forth in Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"): (a) corporate ownership statements containing the information described in Bankruptcy Rule 7007.1; and (b) lists containing the names and addresses of all persons or bodies authorized to administer the foreign proceedings of the Debtors and all parties to litigation pending in the United States in which any of the Debtors is a party at the time of the filing of the Petitions.

iv. The Bermuda Proceedings Are "Foreign Main Proceedings"

79. **COMI**. The Bermuda Proceedings are "foreign main proceedings" as defined by Bankruptcy Code section 1502(4). A "foreign main proceeding" is a "foreign proceeding pending in the country where the debtor has the center of its main interests," or "**COMI**." 11 U.S.C. § 1502(4); *see also id.* § 1517(b)(1) (providing that a recognition order for a foreign main proceeding will be entered if the foreign proceeding "is pending in the country where the debtor has its center of main interests"); *see also, e.g.*, *In re Suntech Power Holdings Co.*, 520 B.R. 399, 416-17 (Bankr. S.D.N.Y. 2014) (overruling objection and holding that COMI of Cayman Islands exempted company was in the Cayman Islands even though COMI had been transferred to the Cayman Islands only months prior to the commencement of the schemes).

80. COMI should be determined based on the debtor's activities "at or around the time the Chapter 15 petition is filed." *See In re Fairfield Sentry Ltd.*, 714 F.3d at 137. However, the restructuring or liquidation activities of the chapter 15 debtor up to the date of the chapter 15 filing are properly considered in determining its COMI. *Id.* at 135 (considering the activities of the pre-filing liquidation committee in winding down the debtor's operations, as well as the actions of liquidators appointed under British Virgin Islands law in determining the entity's COMI). Accordingly, as set forth below, commencing the Bermuda Proceedings and conducting the

Convening Hearing in Bermuda in front of the Bermuda Court should be properly considered in determining the entity's COMI. *Id.* at 132.

81. **Registered Office in Bermuda**. Each Debtor's registered office is located in Bermuda, creating a presumption that Bermuda is the COMI for the Debtors. *See* 11 U.S.C. § 1516(c) ("In the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests."); *see also In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86, 91 (Bankr. S.D.N.Y. 2012).

82. Additional factors relevant to the Court's assessment similarly suggest that Bermuda is the COMI of the Debtors.[25] Indeed, the Debtors' and the Group's future depends on efforts to restructure its debt. As set forth herein, these efforts are currently centered in Bermuda.

83. **Organized Under the Laws of Bermuda**. As set forth above, the Debtors are exempted companies incorporated under the laws of Bermuda with limited liability, and publicly identify as Bermuda-incorporated companies. The Debtors' historical corporate counsel is a Bermuda law firm, Conyers Dill & Pearman Limited, a Bermuda company ("**Conyers**"). Foreign Law Decl. ¶ 2. Conyers has advised the Debtors on various legal matters since their incorporation,[26] and similarly advised Digicel with respect to the 2020 Restructuring. In addition,

[25] Courts consider a variety of factors in identifying a debtor's COMI, none of which on their own are determinative, including: the location of a debtor's headquarters; the location of those persons or entities that actually manage a debtor; the location of a debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors that would be affected by the case; and/or the jurisdiction whose law would apply to most disputes. *See In re SPhinX, Ltd.*, 351 B.R. at 117, *aff'd sub nom. Krys*, 371 B.R. 10. In *In re SPhinX*, the bankruptcy court explained that the factors should not be applied "mechanically" and "[i]nstead, they should be viewed in light of chapter 15's emphasis on protecting the reasonable interests of parties in interest pursuant to fair procedures and the maximization of the debtor's value." *Id.* Here, where the Debtors are holding companies with few if any activities other than the activities required to maintain itself as (a) an exempted holding company in Bermuda and (b) the issuer of the Existing Notes and borrower of the Term Loans, many of these factors are arguably not that useful. For example, the location of its creditors or the Scheme Creditors would not appear to be of much importance in this cross-border case, even if they were known, especially when weighed against these same Scheme Creditors' expectations and overwhelming support for the Scheme taking place in Bermuda.

[26] Being August 20, 2018 (DL); May 21, 2020 (DIHL); and December 7, 2004 (DIFL).

Conyers Corporate Services (Bermuda) Limited has served as the Debtors' corporate secretary since their incorporation. *Id.* Moreover, the Debtors' resident representatives reside in Bermuda.[27]

84. **Restructuring Activities Centralized in Bermuda with Bermuda Court's Judicial Role Being Prevalent**. Furthermore, the Bermuda Proceedings have been commenced in Bermuda and are being conducted under the Bermuda Companies Act and, pursuant to the Schemes, the Schemes are governed by, and are to be construed in accordance with, the laws of Bermuda. DL Scheme at § 26; DIFL Scheme at § 30. Pursuant to the Schemes, the Debtors, the Existing Notes Trustee, Epiq and each of the Scheme Creditors agreed that, to the fullest extent permitted by applicable law, any dispute between them shall be determined by the Bermuda Court. *Id.* Therefore, that is the law that would apply to most disputes. *See, e.g.*, *In re Culligan Ltd.*, 2021 WL 2787926 at *13 (finding Bermuda COMI because, among other things, Bermuda restructuring proceeding made Bermuda law "applicable with respect to any disputes arising with respect to [that proceeding]"). When the Bermuda Court took jurisdiction over the Debtors, it implicitly recognized that the Debtors' COMI was in Bermuda. Furthermore, the Debtors' Bermuda counsel (Conyers) commenced the Bermuda Proceedings and prepared for and appeared at the Convening Hearing, and will appear at the Sanction Hearing, in front of the Bermuda Court. Foreign Law Decl. ¶ 48, 50. Since the Schemes were commenced, the Foreign Representative has exercised or will exercise certain powers conferred upon him by the Bermuda Court necessary for implementation of the Restructuring Transactions, including filing the Chapter 15 Cases. As such, the restructuring activities have been and will be centralized in Bermuda and undertaken by Bermuda actors.

[27] A resident representative is a Bermuda statutory office under the Bermuda Companies Act. They are a local resident and are qualified to accept service in Bermuda on the Debtors' behalf.

85. Moreover, the Bermuda Court's role in the Schemes is prevalent. *See, e.g.*, *In re Modern Land (China) Co., Ltd.*, 641 B.R. 768, 789 (Bankr. S.D.N.Y. 2022) ("Another factor supporting COMI being in the Cayman Islands is the ongoing restructuring proceeding itself."); *In re E-House (China) Enterprise Holdings Limited*, Case No. 22-11326 (JPM) (Bankr. S.D.N.Y. Nov. 15, 2022) (finding that the debtor's COMI was in the Cayman Islands because, among other things, the debtor's restructuring activities were centralized in the Cayman Islands as a result of the Cayman Court's judicial role); *In re Suntech Power Holdings Co., Ltd.*, 520 B.R. at 417 (finding COMI shifted to Cayman Islands from China as a result of Cayman scheme restructuring proceeding).

86. The Restructuring Transactions are essential to the administration of the Debtors' interests because the Debtors believe that if the Restructuring Transactions do not proceed, the Debtors will be unable to comply with their financial obligations under the Existing Indebtedness. Foreign Rep. Decl. ¶ 57. The Debtors have limited available cash and other assets and, if the Restructuring Transactions should fail, would be unable to fully satisfy their debts. *Id.* Put another way, "as of the time of the filing of the Chapter 15 petition, the restructuring efforts [are] the Debtor's primary business activity . . . to ensure the Debtor's survival.'" *In re Modern Land*, 641 B.R. at 790 (quoting foreign representative's supplemental brief) (second alteration in original). If the Schemes are not approved and implemented, it is likely that the Debtors will be wound up, resulting in a substantially lower return to the Debtors' creditors than if the Restructuring Transactions are approved and implemented. Foreign Rep. Decl. ¶ 57. As demonstrated herein, the interests of the Scheme Creditors have been and will continue to be protected in the Bermuda Proceedings. To hinder the Restructuring Transactions by not recognizing the Bermuda Proceedings as foreign main proceedings would serve no purpose. *See, e.g.*, *In re Suntech*, 520

B.R. at 413 ("Shutting the door on the Debtor, where it has no other access, will hinder the restructuring of this multinational business as contemplated by chapter 15.").

87. **Support and Expectations of the Scheme Creditors**. The expectation of the Scheme Creditors is that the Debtors' COMI is in Bermuda. On this factor, "[b]ecause their money is ultimately at stake, one generally should defer . . . to the creditors' acquiescence in or support of a proposed COMI." *In re SPhinX, Ltd.*, 351 B.R. at 117. Indeed, when a court considers factors supporting COMI, the protection of the creditors' interests is paramount. *See, e.g.*, *In re Modern Land*, 641 B.R. at 789 ("Given the proclivity of Courts in the Second Circuit to consider creditor expectations when making a COMI determination, therefore, this factor supports a finding of the Cayman Islands being the [d]ebtor's COMI.").

88. Here, the Debtors' COMI being in Bermuda has the support of the Scheme Creditors who have demonstrated their overwhelming support for the Schemes as reflected by the fact that as of the date of the filing of the Chapter 15 Case, holders of approximately (i) 96.88% of the Existing DL Notes, (ii) 99.06% of the Existing DIFL Subordinated Notes, (iii) 99.54% of the Existing DIFL Unsecured Notes, (iv) 99.33% of the Existing DIFL Secured Notes, and (v) 97.37% of the Term Loans, by value, have delivered irrevocable instructions to the Information Agent to vote on their behalf in favor of the applicable Scheme. See Foreign Rep. Decl. ¶ 34.

89. The fact that the Scheme Creditors—the only impaired creditors—nearly unanimously support Bermuda schemes of arrangement should come as no surprise since a restructuring in Bermuda has been reasonably ascertainable to these creditors since they received the Existing Indebtedness. Foreign Rep. Decl. ¶ 11. In fact, the Existing Notes Documents[28] and

[28] "**Existing Notes Documents**" means, collectively, the Notes, the Existing Notes Indentures, and any related documents.

Credit Agreement include numerous terms and provisions that provide notice to the Debtors' creditors that a restructuring of the Debtors' obligations could take place in Bermuda, under Bermuda law. *Id.*; *see also In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 274 (Bankr. S.D.N.Y. 2019) (listing cases in which offering memoranda and indentures were evaluated for purposes of determining creditors' expectations). Similarly, the Solicitation Statement and Exchange Offer Memorandum state that the Debtors are exempted companies incorporated under the laws of Bermuda with limited liability.[29] Foreign Rep. Decl. ¶ 11. The Solicitation Statement and Exchange Offer Memorandum also make clear that because the Debtors are incorporated in Bermuda, the laws of Bermuda, including those with respect to a potential insolvency proceeding relating to the Debtors (the "**Bermuda Bankruptcy Law**"), would likely be involved in any bankruptcy proceeding of the Debtors.[30] *Id.; see also In re Ascot Fund Ltd.*, 603 B.R. 271, 283 (Bankr. S.D.N.Y. 2019) (finding the debtor's COMI in the Cayman Islands, in part, because "[f]rom the Ascot Fund investors' point of view, and as a matter of fact and law, they invested in a Cayman fund and their rights were to be determined under Cayman law").

90. Moreover, since the Debtors publicly identify as companies incorporated in Bermuda, it is likely the Scheme Creditors knew they were investing in holding companies registered in Bermuda and subject to its laws. *See In re Modern Land*, 641 B.R. at 793 ("[T]he [d]ebtor seeks recognition of a proceeding under Cayman law, a fact which the [s]cheme

[29] *See* Solicitation Statement at 59 ("Digicel Limited is an exempted company, incorporated with limited liability under the laws of Bermuda on October 16, 2000, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda. . . . Digicel Intermediate Holdings Limited is an exempted company, incorporated with limited liability under the laws of Bermuda on May 21, 2020, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda. Digicel International Finance Limited was redomiciled by continuance from St. Lucia to Bermuda on July 11, 2023, and is an exempted company with limited liability registered under the laws of Bermuda, with its registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda.").

[30] *See id.* at 121 (including a section entitled "Certain Insolvency Law and Local Law Limitations" which discusses how the Existing Notes may be compromised pursuant to Bermuda insolvency law).

[c]reditors likely factored into their decision to conduct business with the [d]ebtor in the first place."). Indeed, as Bermuda-incorporated companies, any disputes in relation to the internal corporate affairs of the Debtor would be governed by Bermuda law. Foreign Law Decl. ¶ 2. Any attempt to liquidate and dissolve the Debtors would only be effective as against the Debtors if such proceedings were held in Bermuda because Bermuda courts generally do not recognize non-Bermuda liquidation as being capable of liquidating and dissolving a Bermuda company. *Id.*; *see also In re Modern Land*, 641 B.R. at 791 ("When conducting a COMI analysis, [c]ourts in this District additionally consider the jurisdiction whose law would apply to most disputes."); *In re Olinda Star Ltd. (In Provisional Liquidation)*, 614 B.R. 28, 44 (Bankr. S.D.N.Y. 2020) ("[T]his factor weighs in favor of a COMI in" the jurisdiction whose law applies.).

91. Finally, the existence of fair, well-known procedures for debt restructuring in Bermuda, if necessary, was likely a positive factor in connection with the issuance of the Existing Indebtedness. *See, e.g.*, *In re Suntech*, 520 B.R. at 418 ("The Debtor was incorporated in the Cayman Islands and the Cayman Islands employed a predictable, flexible and cost-effective method for dealing with restructuring."). Such procedures were also likely a reason why the Debtors were structured as holding companies distinct from the operating companies they owned.[31]

92. **Location of Administrative Documents and Corporate Records**. The Debtors maintain certain of their administrative documents in Bermuda. For example, the Debtors maintain certain of their books and records in Bermuda. Foreign Rep. Decl. ¶ 10. Furthermore, each Debtor

[31] The fact that the Debtors are exempted companies is of no moment. *See, e.g.*, *In re Modern Land*, 641 B.R. at 790 ("[T]he fact that the [d]ebtor is an exempted company does not jeopardize its ability to have a COMI in the Cayman Islands."); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 705 (Bankr. S.D.N.Y. 2017) (noting that "[i]t does not matter that [the debtor] is classified as 'exempted' under Cayman Companies Law, even though 'exempted' company status appears to limit that company's activities in the Cayman Islands" and concluding that the Cayman Islands was indeed the debtor's COMI and recognizing the Cayman Islands proceeding as a foreign main proceeding).

is also required by the Bermuda Companies Act to maintain a register of its directors and officers at its registered office in Bermuda. *Id.* The Debtors also periodically hold in-person board meetings in Bermuda. *Id.*

93. **Goals of Chapter 15**. Recognition of the Bermuda Proceedings as foreign main proceedings would comport with the goals of chapter 15. Indeed, Bankruptcy Code section 1508 requires that courts "consider [the] international origin of [Chapter 15] and the need to promote an application of [Chapter 15] that is consistent with the application of similar statutes adopted by foreign jurisdictions." 11 U.S.C § 1508. Accordingly, considerations of judicial cooperation and support for the foreign main proceeding in Bermuda dictates that the Debtors should be allowed to avail themselves of the protections set forth under chapter 15, and obtain recognition as foreign main proceedings. The COMI requirement "should not be applied in a manner that would effectively establish a presumption against recognition of cases from offshore jurisdictions." *In re Millennium Glob. Emerging Credit Master Fund Ltd. (Millennium Glob. I)*, 458 B.R. 63, 83 (Bankr. S.D.N.Y. 2011) ("Such a presumption would set the text of the statute on its head and construe chapter 15 to reverse a line of cases under the predecessor provision, § 304, that recognized proceedings from the Caribbean.").

94. Denial of recognition of the Debtors' COMI in Bermuda may leave the Debtors with the alternative of converting highly consensual Schemes into Bermuda liquidations. Foreign Rep. Decl. ¶ 57. Moreover, such an outcome would "diverge from Chapter 15's stated goal of maximizing the value of a debtor's assets, as well as facilitating the rescue of a financially troubled business" as it "would divert additional funds towards an entirely new insolvency process in an effort to potentially achieve the relief requested" herein. *In re Modern Land*, 641 B.R. at 787. Accordingly, recognition of the Debtors' COMI in Bermuda promotes the goals of chapter 15.

v. Recently, This Court has Found That an Affiliate of the Debtors Had Its COMI in Bermuda

95. This Court has previously found that affiliates of the Debtors had their COMI in Bermuda. As part of the 2020 Restructuring, this Court found that the Debtors' affiliate, Digicel One Limited ("**DGL1**"), had its COMI in Bermuda under facts nearly identical to those present here. *See* 2020 Recognition Order. For example, like DGL1, the Debtors are holding companies incorporated in and with their registered offices in Bermuda. Foreign Rep. Decl. ¶ 10. Additionally, similar to DGL1's creditors being aware of a potential Bermuda restructuring given notice in its offering memorandum, the Debtors' creditors have similarly been aware that a potential Bermuda restructuring of the Debtors' obligations was possible since the issuance of the Existing Indebtedness. Foreign Rep. Decl. ¶ 50. Lastly, like DGL1, the Debtors hold themselves out as Bermuda companies. *Id.*

96. For all of the reasons set forth above, it is respectfully submitted that all of the requirements of section 1517(a) have been satisfied and that the Debtors are entitled to all of the relief provided by section 1520 of the Bankruptcy Code, as applicable, including the application of section 362 of the Bankruptcy Code, which bars the commencement or continuation of actions against the Debtors and/or property of the Debtors located within the territorial jurisdiction of the United States. Accordingly, the Court should enter the Proposed Order recognizing the Bermuda Proceedings as foreign main proceedings.

3. In the Alternative, the Court Should Find That the Bermuda Proceedings Are Foreign Nonmain Proceedings of the Debtors

97. For all the reasons set forth above, the Bermuda Proceedings should be recognized as the "foreign main proceedings" of the Debtors. Nevertheless, should this Court conclude that the Bermuda Proceedings are not foreign main proceedings of the Debtors, in the alternative, the

Bermuda Proceedings should be recognized as "foreign nonmain proceedings" within the meaning of section 1502(5) for the Debtor pursuant to section 1517(b)(2) of the Bankruptcy Code.

98. Courts will recognize a foreign proceeding as a "foreign nonmain proceeding" if "the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending." 11 U.S.C. § 1517(b)(2). Chapter 15 provides no evidentiary presumption as to whether a debtor has an establishment in a particular jurisdiction. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 338 (S.D.N.Y. 2008). Thus, whether an establishment exists in a particular location is "essentially a factual question," *id.* at 338, and the Foreign Representative bears the burden of proof. *In re British Am. Ins. Co. Ltd.*, 425 B.R. 884, 915 (Bankr. S.D. Fla. 2010). Importantly, section 1502(2) of the Bankruptcy Code defines an "establishment" as "any place of operations where the debtor carries out a nontransitory economic activity," and courts have required proof of more than a "mail-drop presence." *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 277 (internal citations omitted); 11 U.S.C. § 1502(2). At least one court—noting the "paucity of U.S. authority" on the subject—has favorably cited a "persuasive" English law holding that the presence of an asset and minimal management or organization can suffice to create an establishment. *See Millennium Glob. I*, 458 B.R. at 84–85 (citing *Shierson v. Vlieland-Boddy*, [2005] EWCA Civ. 974, [2005] W.L.R. 3966 (2005)).

99. As with a determination of a debtor's COMI, whether a debtor has an "establishment" in a country is determined at the time of filing the chapter 15 petition. *See Beveridge v. Vidunas (In re O'Reilly)*, 598 B.R. 784, 803 (Bankr. W.D. Pa. 2019) (adopting *Fairfield Sentry* and *In re Ran*, 607 F.3d 1017 (5th Cir. 2010) findings that "the presumptive date from which [a c]ourt is to ascertain [a] debtor's center of main interests and/or establishment is the

date the Chapter 15 petition was filed"). Several factors "contribute to identifying an establishment: the economic impact of the debtor's operations on the market, the maintenance of a 'minimum level of organization' for a period of time, and the objective appearance to creditors whether the debtor has a local presence." *Millennium Glob. I*, 458 B.R. at 85. Showing the economic impact of a debtor's activities on a foreign jurisdiction involves a "showing of a local effect on the marketplace," *In re Creative Fin., Ltd. (In Liquidation)*, 543 B.R. 498, 520 (Bankr. S.D.N.Y. 2016), evidenced by, among other things, engagement of "local counsel and commitment of capital to local banks," *Millennium Glob. I*, 458 B.R. at 86-67; *see also In re Modern Land*, 641 B.R. at 768, 786.

100. Notably, a basis for recognition of a foreign nonmain proceeding has been found in this District where the debtor's affiliates "have substantial and ongoing business connections" in the jurisdiction, even though its COMI was determined to be in another country. *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 282 (granting recognition of a Brazilian judicial reorganization proceeding as a foreign nonmain proceeding where the debtor's COMI was found to be in Luxembourg). In *Constellation*, the U.S. bankruptcy court found that "non-transitory ties to Brazil are sufficient to recognize the Brazilian Proceeding as a foreign nonmain proceeding with respect to [such non-Brazilian debtor]." *Id.*

101. Here, the Debtors have, first and as described above, centralized their restructuring activities in Bermuda. Second, through their ownership in their subsidiaries, the Debtors maintain a significant presence in the Bermuda marketplace. Foreign Rep. Decl. ¶ 12. Indeed, as of March 31, 2023, Digicel occupied the number one position in the mobile telecommunications services market in Bermuda with 49% of the market share and it generated approximately $84 million in revenue from Bermuda operations for the year ended March 31, 2023. *Id.* Accordingly,

these facts are sufficient to, at a minimum, support the finding of an "establishment" in Bermuda. *See, e.g.*, *In re Serviços de Petróleo Constellation S.A.*, 600 B.R. at 278, 281–82 (recognizing that "COMI is a flexible determination and not a rigid application of factors" and finding that although the Luxembourg-registered parent company's COMI was Luxembourg, its subsidiaries had substantial and non-transitory ties to Brazil, which was sufficient to create an establishment in Brazil for the Luxembourg parent and "to recognize the Brazilian Proceeding as a foreign nonmain proceeding.").

102. In addition, the Existing Notes Documents, the Credit Agreement, and other disclosures discussed above confirm that the Debtors objectively appear to creditors to have a local presence in Bermuda. In the event that the Court determines that the Debtors lack COMI in Bermuda, the facts set forth above provide sufficient evidence that the Debtors maintain an establishment in Bermuda.

103. In addition, the relief a court may grant in a foreign nonmain proceeding is "nearly identical" to the relief provided to a foreign main proceeding. *Id.* at 272. Accordingly, in the event that this Court finds that the Bermuda Proceedings are foreign nonmain proceedings with respect to the Debtors, the Foreign Representative respectfully requests that all relief requested in this Motion be granted as appropriate relief or additional assistance, pursuant to sections 1521 or 1507 of the Bankruptcy Code, respectively, for the reasons further detailed below.

B. Enforcement of the Sanction Orders, the Schemes, and Related Relief

104. The Foreign Representative respectfully seeks entry of an order recognizing and enforcing the Schemes and Sanction Orders and entrusting to the Foreign Representative the administration, realization, and distribution of the Debtors' assets within the territorial jurisdiction of the United States, in each case, pursuant to sections 1521(a) and (b), 1507 and 105 of the Bankruptcy Code.

105. Upon the recognition of a foreign main proceeding (or nonmain proceeding) and at the request of a foreign representative, section 1521(a) of the Bankruptcy Code authorizes the Court, at the request of a recognized foreign representative, to grant "any appropriate relief," which may include, among other things, with limited exceptions, granting any additional relief that may be available to a trustee. *See* 11 U.S.C. § 1521(a)(7).

106. In plenary chapter 11 proceedings, a trustee may obtain a court order directing any party to take "any act . . . necessary for the consummation of the plan," 11 U.S.C. § 1142(b), which can include provisions for the "issuance of securities of the debtor, . . . in exchange for claims or interests." 11 U.S.C. § 1123(a)(5)(D). Accordingly, this requested relief is available to chapter 15 debtors. Further, enforcement of the Schemes and the Sanction Orders is the means for implementing the Schemes and Sanction Orders in the United States, which is necessary to consummate the restructuring of the New York law-governed Existing Notes and Term Loans. Therefore, the requested relief is available to the Foreign Representative and the Debtors, as applicable, in these proceedings.

107. Beyond the specific relief listed in subsection 1521, a court may grant additional assistance "consistent with the principles of comity." 11 U.S.C. § 1507(b). In determining whether to provide additional assistance under this title or under other laws of the United States for business (rather than personal) restructurings,[32] the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure: (a) just treatment of all holders of claims against or interests in the debtor's property; (b) protection of claim holders in the United

[32] Section 1507(b)(5) of the Bankruptcy Code does not apply here because the Debtors are business entities. *See In re Bd. of Dirs. of Telecom Arg. S.A.*, 2006 WL 686867 n.11 (Bankr. S.D.N.Y. Feb. 24, 2006) (the provision of an opportunity for a fresh start factor only applies to individual debtors, not business entities); *In re Culmer*, 25 B.R. 621, 631 n.4 (Bankr. S.D.N.Y. 1982) (the § 304(c)(6) factor "by its terms relates to individual debtors and thus has no application" in the case of a business entity).

States against prejudice and inconvenience in the processing of claims in such foreign proceeding; (c) prevention of preferential or fraudulent dispositions of property of the debtor; and (d) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title. 11 U.S.C. § 1507(b). Additionally, section 105(a) of the Bankruptcy Code provides that the "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).

108. As a preliminary matter, courts in this District have routinely analyzed the substantive rules and procedural mechanisms prescribed by the Bermuda Bankruptcy Law and have found that it comports with the United States' fundamental notions of fairness. *See In re PB* [ECF No. 50] (finding that relief requested in connection with Bermuda proceeding was "in the interests of public and international comity, consistent with the public policy of the United States"). Accordingly, there are numerous cases in which courts in this District have granted comity and given full force and effect to orders confirming Bermuda schemes of arrangements and liquidations. *See, e.g.*, *In re Markel* [ECF No. 40] (enforcing a Bermuda scheme of arrangement); *In re Digicel* [ECF No. 29] (same); *In re Culligan* [ECF No. 60] (recognizing Bermuda liquidation proceedings as "foreign proceedings" and enforcing, among other things, an injunction against certain actions within the territorial jurisdiction of the United States); *In re George's Bay* [ECF No. 23] (same); *In re Spencer Capital* [ECF No. 16] (same). The Foreign Representative respectfully submits that this Court should follow the litany of precedents respecting Bermuda Bankruptcy Law and schemes of arrangements and grant the discretionary relief sought here. For the reasons that follow, the Foreign Representative requests that this Court assist in the implementation of the Schemes and the Sanction Orders by exercising its discretion under sections 1521(a) and (b), 1507 and 105(a) of the Bankruptcy Code.

1. Assistance with Implementing the Scheme

109. Courts in this District have held that Bermuda schemes of arrangement constitute foreign proceedings. *See, e.g.*, *In re Markel* [ECF No. 23] (recognizing a Bermuda scheme of arrangement); *Digicel I* [ECF No. 29] (same); *In re Bd. Of Dirs. of Hopewell Int'l Ins. Ltd,* 238 B.R. 25, 49-49 (Bankr. S.D.N.Y. 1999) (holding that a proceeding in a Bermuda court for approval of a scheme of arrangement executed under the Bermuda Companies Act was a "foreign proceeding" for purposes of chapter 15), *aff'd sub nom. In re Hopewell*, 275 B.R. 699 (S.D.N.Y. 2002).

110. Therefore, "appropriate relief" under section 1521 or "additional assistance" under section 1507 should include recognizing and enforcing a restructuring plan approved by the Bermuda Court.

111. Recognizing and enforcing the Schemes, including the Releases, and the Sanction Orders in the United States is a necessary and appropriate exercise of comity. As described above, extensive procedural protections in Bermuda have assured a rigorous, court-supervised restructuring. *Supra* ¶ 68; *see also* Foreign Law Decl. ¶ 25. The Foreign Representative now requires additional protection and assistance from this Court to ensure the successful completion of the Debtors' restructuring through the Schemes, and thereby effectuate the purpose of chapter 15.

112. Support from this Court is particularly important in the Chapter 15 Cases, as the Debtors cannot otherwise successfully restructure their New York law-governed debt in accordance with the terms of the Schemes. As a practical matter, companies such as the Debtors that have accessed the international and U.S. capital markets and issued debt governed by U.S. law, but are undergoing restructuring proceedings outside the United States, require assistance from U.S. courts. This assistance is necessary to fully consummate their restructurings in order to

"facilitat[e] . . . the rescue of financially troubled businesses . . .," which is one of the purposes of chapter 15 of the Bankruptcy Code. *See* 11 U.S.C. § 1501(a)(5). Moreover, the Schemes themselves require, as a condition to closing the Restructuring Transactions, the "entry of an order by the US Bankruptcy Court pursuant to Chapter 15 of the US Bankruptcy Code, recognising and enforcing the Schemes, with such order not having been reversed, stayed, modified or vacated on appeal." DL Scheme at § 16.1(j); DIFL Scheme at § 21.1(j).

2. Direction and Authority of Directed Parties

113. Pursuant to sections 105(a), 1507(a), and 1521(a) of the Bankruptcy Code, the Foreign Representative seeks additional assistance from the Court in authorizing and directing the Directed Parties to carry out all administrative actions required of them pursuant to the Schemes or Sanction Orders, or that are necessary to consummate the terms of the Schemes and Sanction Orders and the transactions contemplated thereby. This is important because, as described above, the Existing Indebtedness will be exchanged for the Scheme Consideration, as applicable, the Existing Notes will be canceled and removed from DTC's and the Existing Notes Trustee's books and records, and the Term Loans will be amended and restated.

114. These actions will invariably require the assistance of the Directed Parties. The Debtors believe that the Directed Parties may assert that they are not subject to Bermuda Court jurisdiction and, as such, may resist providing this assistance (including, for example, formally canceling the Existing Notes and taking any steps to facilitate issuance of the Scheme Consideration) without first obtaining an order from a U.S. court directing and authorizing such action. Accordingly, the Foreign Representative seeks assistance from the Court in authorizing and directing the Directed Parties to take all actions that are required of them to consummate the Schemes, including prompt assistance to facilitate the following: (a) exchange of the Existing Indebtedness for Scheme Consideration, as applicable; and (b) cancellation and removal of all

remaining positions on account of the Existing Notes on the books and records of the Existing Notes Trustee and DTC.

115. By providing this relief, the Court will give clear direction and authority under U.S. law to the Directed Parties to carry out the requirements of the Schemes in accordance with Bermuda Bankruptcy Law, other applicable law, and the Sanction Orders. This same relief was granted by courts in this District in previous chapter 15 cases. *See, e.g.*, *In re ODN* [ECF No. 24] (directing and authorizing the existing notes trustee and DTC to take all actions necessary to cancel the debtor's existing notes and exchange them for new notes); *In re Andrade* [ECF No. 41] ("The Directed Parties are directed and authorized to take any and all lawful actions necessary to give effect to and implement the EJ Plan and the Brazilian Confirmation Order and the transactions contemplated thereunder, including, without limitation, the consummation of the New Money Investment, cancellation and discharge of the Notes and the Indentures, and the issuance of the Type 1 New Notes and the Type 2 New Notes."); *In re U.S.J.* [ECF No. 21] ("The DTC, the Indentures Trustees, their agents, attorneys, successors, and assigns are hereby authorized and directed to take actions necessary to implement the restructuring transactions approved by the Brazilian Confirmation Order . . . ."); *Digicel I* [ECF No. 29] (authorizing DTC and existing notes trustee "to take any actions or execute any documents each believes appropriate in furtherance of or in connection with consummating the transactions contemplated by the Bermuda Orders and the Scheme, including among other things, the cancellation and discharge of the Existing Notes and the Existing Notes Indentures").

3. Releases Supporting the Schemes in the United States

116. The Foreign Representative additionally requests that the Court enforce and give full force and effect to the Releases in the territorial jurisdiction of the United States. Releasing the Released Parties (as defined in the Deed of Release) is necessary to prevent interference with

the consummation of the Schemes and, in particular, the transfer of the Existing Notes in exchange for Scheme Consideration. Among others, the Released Parties include the Existing Noteholders, the Term Loan Lenders and the Supporting Shareholder. This Court has routinely enforced releases similar to the Releases in various foreign proceedings. *See, e.g.*, *In re ODN* [ECF No. 24] (enforcing third-party releases in connection with recognition and enforcement of foreign plan); *In re Andrade* [ECF No. 41] (same); *In re U.S.J.* [ECF No. 21] (same); *In re Markel* [ECF No. 40] (enforcing third-party releases contained in Bermuda schemes of arrangement); *In re Huachen Energy Co., Ltd.*, No. 22-10005 (LGB) (Bankr. S.D.N.Y. Feb. 2, 2022) [ECF No. 19] (enforcing third-party releases contained in reorganization plan approved in Chinese foreign proceeding); *In re Oi S.A.*, 587 B.R. 253, 266–67 (Bankr. S.D.N.Y. 2018) (enforcing third-party releases contained in Brazilian reorganization plan); *In re OAS S.A. et al*., No. 15-10937 (SMB) (Bankr. S.D.N.Y. Oct. 5, 2018) [ECF No. 170] (same); *In re Lehman Bros. Int'l (Europe)*, No. 18-11470 (SCC) [ECF No. 15] (Bankr. S.D.N.Y. June 19, 2018) (enforcing UK scheme and order of English court sanctioning third-party releases); *In re Odebrecht Óleo e Gás S.A.*, No. 17-13130 (JLG) (Bankr. S.D.N.Y. Dec. 13, 2017) [ECF No. 28] (enforcing third-party release in connection with recognition and enforcement of Brazilian reorganization proceeding).

117. Moreover, the Releases are narrow in scope and are consistent with the types of releases that are generally provided (and approved) in chapter 11 cases. Broadly, the only claims released in connection with the Releases include releases of the Scheme Claims of the Scheme Creditors, the Depository Nominee, the Administrative Agent, and the Existing Notes Trustee, the cancellation of obligations under the Existing Notes, as well as the releases covered by the Deed of Release. Foreign Law Decl. ¶ 46. Importantly, however, the Releases do not release (a) the Group from (i) their obligations to implement and consummate the Schemes or (ii) any claims

other than claims (including the Existing Notes and Term Loans) that are compromised under the Schemes or (b) the Released Parties from any claims arising out of fraud, gross negligence, willful misconduct, willful default, or dishonesty. *Id.* Accordingly, the Releases are narrowly tailored to achieve the purpose of the Scheme—to facilitate the restructuring of the Existing Notes and Term Loans.

118. The Foreign Representative, therefore, respectfully requests that the Court enforce and give full force and effect to the Releases contained in the Schemes. If the Court declines to enforce the Releases, then certain creditors could seek to obtain judgments in the United States against the Debtors or other Released Parties in contravention of the Schemes. Such an outcome may result in prejudicial treatment of certain creditors and parties in interest to the detriment of the Debtors' reorganization efforts and would prevent the fair and efficient administration of the Restructuring Transactions.

4. Injunctions Supporting the Schemes in the United States

119. The Foreign Representative also requests permanent injunctions under section 1521 of the Bankruptcy Code enjoining any entities subject to this Court's jurisdiction from commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Bermuda Proceedings, Schemes, or Sanction Orders, including, without limitation, to obtain possession of, exercise control over, or assert claims against the Debtors or their property or taking any action against the Debtors or their property located in the territorial jurisdiction of the United States to recover or offset any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled, or released under the Schemes (including as a result of the laws of Bermuda or other applicable jurisdiction, as contemplated under the Schemes) or the Sanction Orders. The requested injunctive relief will not enjoin actions to enforce the Schemes or any other documents

that consummate the Schemes. Rather, the requested injunctive relief will help ensure the fair and efficient administration of the Schemes and that all of the Debtors' creditors are bound by the terms of the sanctioned Schemes.

120. Section 1521(e) of the Bankruptcy Code provides that the standards for injunctive relief apply to certain relief available under section 1521. *In re Olinda Star Ltd.*, 614 B.R. at 47–48. Permanent injunctive relief, such as the relief requested herein, is appropriate where the movant can show a likelihood of irreparable harm. This Court has found that a debtor or its estate would suffer irreparable harm where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g.*, *Victrix S.S. Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713–14 (2d Cir. 1987) ("The equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail."); *In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) ("[I]rreparable harm is present when the failure to enjoin local actions will disrupt the orderly reconciliation of claims and the fair distribution of assets in a single consolidated forum.") (internal citations omitted); *In re MMG LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) ("[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.").

121. In the context of the enforcement of a foreign confirmation order, irreparable harm exists where the orderly determination of claims against a debtor and the fair distribution of its assets could be disrupted. *See, e.g.*, *Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir. 1985) ("Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail."); *In re Lloyd*, 2005 Bank. LEXIS 2794, at *5 (Bankr. S.D.N.Y. Dec. 7, 2005) ("Unless an injunction is issued, one or more

parties may interfere with, or otherwise cause harm to, the administration, implementation and enforcement of the scheme of arrangement, including the satisfaction of the claims of Scheme Creditors, causing immediate and irreparable harm."); *In re MMG LLC*, 256 B.R. at 555 ("As a rule . . . irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of the other creditors.").

122. The Court has authority to grant the relief requested herein in the Chapter 15 Cases. The United States Supreme Court, the United States Court of Appeals for the Second Circuit, and this Court have all recognized a federal court's authority to grant permanent injunctive relief to enforce foreign plans and discharges. *See, e.g.*, *Can. S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883) (actions brought in the United States by bondholders who did not participate in the Canadian insolvency proceedings of a Canadian railroad could not be maintained, even though the bonds were payable in New York); *In re Bd. of Dirs. of Telecom Arg., S.A.*, 528 F.3d 162, 174–76 (2d Cir. 2008) (affirming bankruptcy court decision granting full force and effect to Argentine plan); *In re ODN* [ECF No. 24] (granting permanent injunctive relief to enforce Brazilian EJ plan); *In re Andrade* [ECF No. 40] (same); *In re Odebrecht Engenharia* [ECF No. 15] (same); *In re Odebrecht Óleo* [ECF No. 28] (same); *In re Serviços de Petróleo Constellation S.A.* [ECF No. 192] (granting permanent injunctive relief to enforce Brazilian judicial reorganization (RJ) plan).

123. Here, absent a permanent injunction, certain creditors may later take action against the Debtors or their property in the territorial jurisdiction of the United States in an attempt to circumvent the terms of the Schemes. *In re Rede Energia S.A.*, 515 B.R. 69, 94 (Bankr. S.D.N.Y. 2014) (explaining that, absent a permanent injunction, creditors would "return to Brazil to attempt to renegotiate and seek a higher distribution, or would commence lawsuits against the Debtor in the United States to recover further"); *Aralco S.A. Indústria e Comércio*, No. 15-10419 (REG)

(Bankr. S.D.N.Y. Apr. 21, 2015) [ECF No. 22] (finding that "absent permanent injunctive relief, the Brazilian Bankruptcy Proceedings and the Debtors' efforts to consummate the Brazilian Reorganization Plan could be thwarted by the actions of certain creditors"). Allowing evasion of the terms of the Schemes (including the Releases) or the Sanction Orders would force the Debtors to defend against these suits, thus depleting their resources, and prejudicing their reorganized value. Foreign Rep. Decl. ¶ 61. For these reasons, an injunction would support implementation of the Schemes and the Sanction Orders and would protect the interests of all creditors in having their claims valued and paid on a consistent, nondiscriminatory basis as determined by the Bermuda Court. *Id.* An injunction will ensure that all parties in interest in the Bermuda Proceedings are bound within the United States by the Schemes to which they will be bound under Bermuda Bankruptcy Law.

C. Recognition of the Bermuda Proceedings and Enforcement of the Schemes and the Sanction Orders Is Consistent with the Goals of Chapter 15

124. The relief requested herein is founded on the congressional mandate that U.S. courts should cooperate with foreign proceedings and foreign representatives to promote the goals of chapter 15. *See* 11 U.S.C. § 1525(a) ("Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee."). Moreover, the relief requested herein is "appropriate," as that term is used in section 1521 of the Bankruptcy Code, because it is necessary to ensure the success of the Bermuda Proceedings and the Schemes.

1. Creditors and Other Parties in Interest Will Be Sufficiently Protected

125. The Court may grant additional relief "only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a) (adopting Article 22 of the Model Law). Although the Bankruptcy Code does not define "sufficient

protection," the legislative history indicates that the prohibition applies where "it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors." H.R. REP. No. 109-31(1), pt. 1, 116 (2005). As a result, courts have focused on the procedural fairness of the foreign proceeding in order to determine whether creditors are sufficiently protected. *See, e.g.*, *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010) (examining whether the procedures utilized in the foreign proceeding accorded the American notions of fundamental fairness).

126. A determination of sufficient protection "requires a balancing of the respective parties' interests." *In re AJW Offshore, Ltd.*, 488 B.R. 551, 559 (Bankr. E.D.N.Y. 2013); *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 556–58 (E.D. Va. 2010); *CT Inv. Mgmt. Co., LLC v. Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96, 108 (Bankr. S.D.N.Y. 2012); *In re Tri-Cont'l Exch.*, 349 B.R. 627, 637 n.14 (Bankr. E.D. Cal. 2006) ("The idea underlying article 22 is that there should be a balance between relief that may be granted to the foreign representative and the interests of the persons that may be affected by such relief. This balance is essential to achieve the objectives of cross-border insolvency legislation.") (quoting the Model Law); Model Law at ¶ 161. Section 1522 of the Bankruptcy Code "gives the bankruptcy court broad latitude to mold relief to meet specific circumstances." *In re Int'l Banking Corp. B.S.C.*, 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) (internal citations omitted).

127. Here, the Debtors' creditors are "sufficiently protected" by the treatment afforded to them under the Schemes and the process by which the Schemes will be sanctioned. *See generally* Foreign Law Decl. The Scheme Creditors, for example, are not being subjected to undue inconvenience or prejudice. Rather, the Schemes treat all similarly situated creditors equally and distribute consideration under the Schemes in a manner substantially comparable to what might

occur under U.S. law. *Id.* at ¶ 37. The relief requested herein "would [also] assist in the efficient administration of this cross-border insolvency proceeding, and it would not harm the interests of the debtors or their creditors." *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010). That certain creditors "may be denied an advantage over the debtor's other . . . creditors is not a valid reason to deny relief to the foreign representative." *In re Atlas Shipping A.S.*, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009).

128. The Debtors have successfully negotiated a consensual resolution with their creditors to adjust the terms of their funded indebtedness to the current financial status of their business activities and capabilities. This resolution is subject to approval by the requisite majority of creditors and sanctioning by the Bermuda Court. Additionally, throughout the restructuring process, all creditors and parties in interest have been and will continue to be kept abreast of the Bermuda Proceedings, and thereby have and will continue to have the opportunity to support the DL/DIFL RSA, object, present evidence, and/or otherwise fully participate in the Bermuda Proceedings in a manner that is consistent with U.S. standards of due process. *Supra* ¶ 46-48; Foreign Law Decl. ¶ 34. Indeed, creditors were provided and will continue to be provided robust notice of the Bermuda Proceedings, including, among other things, through the DL/DIFL RSA Press Release, Practice Statement Letter, Explanatory Statement, Exchange Offer Memorandum, Solicitation Statement, and Scheme Meetings Notice. Foreign Rep. Decl. ¶¶ 35-41.

129. The Bermuda Proceedings provided affected creditors 30 days to object to the terms of the Schemes, including the Releases set forth therein. That notice period is longer than the minimum 21-day objection period that would be provided under the law in this District to object to confirmation of a U.S. chapter 11 plan. Bankruptcy Rule 2002(b) (requiring 28 days' notice of chapter 11 plan confirmation hearing); S.D.N.Y. Local Bankruptcy Rule 3020-1 (requiring

objection to chapter 11 plan confirmation to be filed at least seven days before a confirmation hearing).

2. The Relief Requested Is Not Manifestly Contrary to the Public Policy of the United States

130. Although the Court may deny a request for any chapter 15 relief that would be "manifestly contrary to the public policy of the United States" (11 U.S.C. § 1506), this public policy exception is narrowly construed. *See In re ABC Learning Ctrs.*, 728 F.3d at 309 (quoting H.R. Rep. No. 109-31(1) at 109 (2005)); *In re Sino-Forest Corp.*, 501 B.R. 655, 665 (Bankr. S.D.N.Y. 2013); *In re Toft*, 453 B.R. 186, 195 (Bankr. S.D.N.Y. 2011). Importantly, the result achieved in a foreign proceeding does not have to be identical to that in the United States. Rather, "[t]he key determination . . . is whether the procedures used [in the foreign proceeding] meet our fundamental standards of fairness." *In re Metcalfe & Mansfield Alternative Invs.*, 421 B.R. at 697; *see also In re Bd. of Dirs. of Telecom Arg. S.A.*, 2006 WL 686867, at *25 (Bankr. S.D.N.Y. 2006) ("Comity does not require that the foreign law be a carbon copy of our law; rather, [it] must not be repugnant to American laws and policies." (internal quotation marks omitted)).

131. Furthermore, chapter 15 was drafted to "incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency." 11 U.S.C. § 1501(a). Section 1501(a) provides that chapter 15 is intended to, among other things: (a) facilitate the cooperation between "courts and other competent authorities of foreign countries involved in cross-border insolvency cases"; (b) undergird the "fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor"; and (c) "protect[] and maximiz[e] [] the value of the debtor's assets." *Id.*

132. Here, the Bermuda Proceedings and Schemes are consistent with the public policy of the United States. As further explained in the Foreign Law Declaration, schemes of arrangement under Bermuda Bankruptcy Law provide robust procedural protections to creditors, regardless of their location, including opportunities to object and support a scheme. Foreign Law Decl. ¶ 34. Thus, it is no surprise that courts in this District have repeatedly recognized Bermuda restructuring proceedings by finding that they are not "themselves [], by their nature, contrary to United States public policy." *In re Culligan Ltd.*, 2021 WL 2787926 at *16 (recognizing a Bermuda scheme of arrangement over creditor objection that, among other things, such scheme violates U.S. public policy); *In re Markel* [ECF No. 23] (recognizing a Bermuda scheme of arrangement); *In re Digicel* [ECF No. 29] (same); *In re Hopewell*, 238 B.R. at 48-49 (same), *aff'd sub nom. In re Hopewell*, 275 B.R. 699 (S.D.N.Y. 2002).

133. The relief requested pursuant to this Motion is analogous to the relief afforded to debtors under chapter 11 of the Bankruptcy Code. Confirmed chapter 11 plans, for example, routinely permanently enjoin claims against a debtor and its successor(s) that have been released and discharged under a restructuring plan. Moreover, U.S. courts regularly direct parties to take necessary actions to carry out transactions contemplated by the plan on behalf of the estate. Thus, the requested relief that the Directed Parties be authorized and directed to take any actions necessary for the consummation of the Schemes would be available in chapter 11 cases and, therefore, should be granted here. *See In re Rede Energia S.A.*, 515 B.R. at 93 (finding injunctions emanating from chapter 11 plans and the issuance of instructions to indenture trustees and the DTC to take actions necessary to effectuate such plans to be among the relief granted in chapter 11 and, accordingly, available to foreign representatives in chapter 15 under section 1521).

134. Furthermore, enforcing the Releases in the Schemes are not contrary to public policy. *See In re Sino-Forest Corp.*, 501 B.R. at 665 (holding that, in the Second Circuit, "where the third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy"). Indeed, no court has found that the grant of relief and additional assistance to enforce and give effect to third-party releases approved in a foreign proceeding is manifestly contrary to the public policy of the United States.[33] In fact, this Court has repeatedly recognized and enforced foreign plans that contain third-party releases, which is predicated on a finding that the same are not manifestly contrary to public policy. *See, e.g.*, *In re ODN* [ECF No. 24] (enforcing debtor and third-party releases contained in a foreign restructuring plan); *In re Andrade* [ECF No. 41] (same); *In re MIE Holdings Corp.*, Case No. 22-10216 (JLG) (Bankr. S.D.N.Y. Apr. 21, 2022) [ECF No. 14] (same); *In re Huachen* [ECF No. 19] (same); *In re PT Pan Brothers Tbk*, Case No. 22-10136 (MG) (Bankr. S.D.N.Y. Mar. 8, 2022) [ECF No. 12] (same); *In re Atlas Financial Holdings, Inc.*, Case No. 22-10260 (LGB) (Bankr. S.D.N.Y. Mar. 30, 2022) [ECF No. 18] (same); *In re Hidili Industry International Development Limited*, Case No. 22-10736 (DSJ) (Bankr. S.D.N.Y. July 12, 2022) [ECF No. 16] (same); *In re E-House (China) Enterprise Holdings Limited* [ECF No. 22] (same).

135. In addition, as with proceedings under chapter 11, the Bermuda Proceedings provide for a centralized process to assert and resolve claims against the estate in one tribunal, the Bermuda Court, and to provide distributions to creditors in order of priority. Foreign Law Decl. ¶ 22. Thus, as required by the Model Law (and as incorporated in chapter 15), granting the relief requested here would foster cooperation between courts in Bermuda and the United States. For

[33] *Cf. In re PT Bakrie Telecom Tbk*, 628 B.R. 859, 890 (Bankr. S.D.N.Y. 2021) (granting recognition and denying relief to enforce third-party releases not expressly set forth in Indonesian PKPU plan, on grounds other than public policy exception of section 1506).

example, by granting the relief requested here, including giving effect to the Releases, this Court would be assisting the Bermuda Court in the orderly restructuring of the Existing Notes and Term Loans by enjoining creditors from commencing actions against the Debtors or their assets in the United States and by giving the Directed Parties the power that they believe they need to carry out their duties.

136. For these reasons, the Bermuda Proceedings are patently fair, and they and the Schemes (including the Releases) comport with the United States' standards of fundamental fairness and with United States public policy. Accordingly, the relief requested here should be granted.

3. Enforcement of the Schemes Is Consistent with the Principles of Comity

137. Courts in this District have routinely held that recognizing and enforcing a foreign plan and confirmation order falls within the scope of the relief available under section 1521 and section 1507. *See, e.g.*, *In re U.S. Steel Canada Inc.*, 571 B.R. 600, 609 (Bankr. S.D.N.Y. 2017); *In re Cell C Proprietary Ltd.*, 571 B.R. 542, 551 (Bankr. S.D.N.Y. 2017); *In re Rede Energia*, 515 B.R. at 69. In particular, bankruptcy courts in this District have enforced Bermuda schemes of arrangement in the United States. *See, e.g.*, *In re Markel* [ECF No. 40] (enforcing a Bermuda scheme of arrangement); *In re Digicel* [ECF No. 29] (same). In addition, a bankruptcy court in this District has also explained in detail why a United Kingdom scheme of arrangement and associated sanction order may properly be recognized and enforced in the United States under this theory. *See Avanti*, 582 B.R. at 619. And, as discussed above, the structure of United Kingdom schemes is acutely similar to that of Bermuda schemes. Foreign Law Decl. ¶ 18.

138. The decision of whether to grant appropriate relief or additional assistance by enforcing a scheme and sanction order is "guided by principles of comity and cooperation with foreign courts." *Avanti*, 582 B.R. at 616. The need to extend comity to foreign proceedings is

particularly salient with respect to proceedings such as the Bermuda Proceedings that determine how property will be distributed in a collective proceeding because "[t]he equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding" to bind all creditors and comprehensively effectuate a plan of reorganization. *Atlas Shipping*, 404 B.R. at 737 (quoting *Victrix*, 825 F.2d at 713–14); *Canada S. Ry. Co. v. Gebhard*, 109 U.S. 527, 539 (1883) ("Unless all parties . . . can be bound by the arrangement . . . the scheme may fail . . . . Under these circumstances, the true spirit of international comity requires that schemes of this character, legalized at home, should be recognized . . . ."); *Victrix S.S. Co.*, 825 F.2d at 714 ("The equitable and orderly distribution of a debtor's property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.").

139. Comity is particularly important in the insolvency context notwithstanding the fact that recognition of a foreign restructuring proceeding may implicate certain rights under U.S. law. For example, in *In re. Bd. of Dirs. of Telecom Arg., S.A.*, then-Second Circuit Judge Sotomayor affirmed a bankruptcy court's order extending comity to Argentine insolvency proceedings, finding that those proceedings did not violate U.S. public policy considerations manifest in the Trust Indenture Act ("**TIA**"). 528 F.3d at 165. The Second Circuit held that a bankruptcy court may grant enforcement of foreign insolvency proceedings that result in the restructuring of TIA-qualified notes so long as recognition of those proceedings is otherwise valid under then-section 304 of the Bankruptcy Code. Foreign insolvency proceedings can also modify payment terms under an indenture notwithstanding noteholders' TIA rights. See *In re Bd. of Dirs. of Multicanal S.A.*, 307 B.R. 384 (Bankr. S.D.N.Y. 2004). Citing prior Supreme Court precedent, Judge Gropper rejected claims by noteholders:

> [I]f foreign law can under certain circumstances trump the U.S. Constitution and preclude bondholders from enforcing their contractual rights, as *Gebhard* holds, there is no basis for adopting the principle espoused by [the noteholders], that foreign law can under no circumstances override § 316(b) of the Trust Indenture Act (except perhaps if the foreign law is identical in all respects to U.S. law). Nor can *Gebhard* be limited to the effect of a foreign proceeding on State rather than Federal rights. It is the seminal decision on granting comity to foreign insolvency proceedings.

Id. at 390.

140. In that regard, the Supreme Court has held that a foreign judgment should not be challenged in the United States if the foreign forum provides:

> a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting.

Hilton v. Guyot, 159 U.S. 113, 202–03 (1895); *Avanti*, 582 B.R. at 618–19 (extending comity to a sanctioned scheme that: complied with applicable statutory requirements; fairly represented creditors in classification; found the majority acted in a *bona fide* manner; was one that an intelligent and honest man, acting in respect of his interests as a creditor, might reasonably approve; and where jurisdiction was proper); *Metcalfe*, 421 B.R. at 698 (holding that a Canadian order approving a release and injunction was enforceable in chapter 15 under principles of comity because "[t]he U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings."); *see also In re Sino-Forest Corp.*, 501 B.R. at 663–64 ("The same analysis [as *Metcalfe*], with the same conclusions, applies here.").

141. The Bermuda Proceedings easily meet the standard for extending comity. The facts and circumstances here are very similar to those in *Metcalfe* and *Sino-Forest*. The United States and Bermuda, as a territory of the United Kingdom, share the same common law traditions and fundamental principles of law. *See, e.g.*, *In re Olinda Star Ltd.*, 614 B.R. at 44 (finding that the "United States and [the British Virgin Islands, another territory of the United Kingdom], share common-law traditions and fundamental principles of law, including an emphasis on procedural fairness"). Moreover, in the Bermuda Proceedings in particular, the Scheme Creditors have a full and fair opportunity to vote on and be heard in connection with the Schemes, in a manner consistent with U.S. standards of due process. Foreign Law Decl. ¶ 34. The Schemes, similar to United Kingdom schemes, require greater than a majority in number representing not less than 75% in value of the single class of Scheme Creditors present and voting at the relevant Scheme Meeting to vote in favor of the Scheme to be legally binding. Foreign Law Decl. ¶ 25; *see also Avanti*, 582 B.R. at 618–19 (recognizing a foreign scheme with the same voting requirements). Accordingly, enforcing the Schemes and Sanction Orders as appropriate relief or additional assistance under section 1521 or 1507 is an appropriate exercise of comity.

142. Granting comity to the Schemes and Sanction Orders should appropriately extend to the Releases provided for therein. Importantly, such Releases need not be available to a chapter 11 debtor for granting comity to be appropriate in a chapter 15 proceeding. "[P]rinciples of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions [appropriately granted in a foreign proceeding], even if those provisions could not be entered in a plenary chapter 11 case." *In re Metcalfe & Mansfield*, 421 B.R. at 696.

143. This Court has not hesitated to enforce third-party releases similar to the Releases in various foreign proceedings. *See, e.g.*, *Sino-Forest*, 501 B.R. at 665 (enforcing foreign order containing third-party releases); *see also In re Ocean Rig UDW Inc.*, 570 B.R. at 687 (recognizing and enforcing terms of scheme that released subsidiary guarantees); *In re Towergate Fin. plc*, No. 15-10509 (SMB) (Bankr. S.D.N.Y. Mar. 27, 2015) [ECF No. 16] (same); *In re New World Res. N.V.*, No. 14-12226 (SMB) (Bankr. S.D.N.Y. Sept. 9, 2014) [ECF No. 20] (same); *Avanti*, 582 B.R. at 606 (recognizing and enforcing a United Kingdom scheme and sanction order where "failure of a U.S. bankruptcy court to enforce [certain third-party releases] could result in prejudicial treatment of creditors to the detriment of the Debtor's reorganization"); *supra* ¶ 116. The same circumstances are present here. If the Court declines to enforce the Releases of the Released Parties in the Schemes, then certain Scheme Creditors or other entities could seek to obtain judgments in the United States against the Debtors or other Released Parties. Such an outcome will result in prejudicial treatment of certain creditors and parties in interest to the detriment of the Debtor's reorganization efforts and will prevent the fair and efficient administration of the Restructuring Transactions.

144. Thus, principles of comity support enforcement of the Schemes and the Releases of the Released Parties therein, whether or not the same relief could be ordered in a plenary chapter 11 case. *See Avanti*, 582 B.R. at 619 (enforcing a scheme and sanction order including third-party releases); *Sino-Forest*, 501 B.R. at 665 ("In [the Second] Circuit, where third-party releases are not categorically prohibited, it cannot be argued that the issuance of such releases is manifestly contrary to public policy . . . ."); *Metcalfe*, 421 B.R. at 700 ("Principles of comity in chapter 15 cases support enforcement of the Canadian Orders in the United States whether or not the same relief could be ordered in a plenary case under chapter 11.").

NOTICE

145. In accordance with Rule 2002(q) of the Bankruptcy Rules, the Foreign Representative will provide notice of this Motion to (a) the Debtors, (b) the Office of the United States Trustee for Region 2 (the "**U.S. Trustee**"), and (c) the Notice Parties (as defined in the *Motion Pursuant to Fed. R. Bankr. P. 2002 and 9007 Requesting Entry of Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*), filed contemporaneously herewith. Draft copies of this Motion were also shared with counsel to the AHGs and the U.S. Trustee prior to filing this Motion. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

146. No previous request for the relief sought herein has been made by the Foreign Representative to this Court or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Foreign Representative respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: October 12, 2023
New York, New York

/s/ Timothy Graulich

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800
Timothy Graulich, Esq.
Darren S. Klein, Esq.
Stephen D. Piraino, Esq.
Richard J. Steinberg, Esq.

Counsel to the Foreign Representative

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: **DIGICEL INTERNATIONAL FINANCE LIMITED, *et al.*,[1]** **Debtors in Foreign Proceedings**	**Chapter 15** **Case No. 23-11625 (JPM)** **(Joint Administration Pending)**

ORDER GRANTING (I) RECOGNITION OF FOREIGN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE, (III) FULL FORCE AND EFFECT IN THE UNITED STATES TO THE SCHEMES AND SANCTION ORDERS, AND (IV) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE

Upon the *Motion for (I) Recognition of Foreign Proceedings, (II) Recognition of Foreign Representative, (III) Recognition of Sanction Orders and Related Schemes, and (IV) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "**Motion**")[2] of Lawrence Hickey (the "**Foreign Representative**") of Digicel International Finance Limited ("**DIFL**"), Digicel Intermediate Holdings Limited ("**DIHL**") and Digicel Limited ("**DL**" and, together with DIFL and DIHL, the "**Debtors**"), which are subject to the reorganization proceedings entitled (i) "In the Matter of Digicel International Finance Limited" concerning a scheme of arrangement under section 99 of the Bermuda Companies Act between DIFL and DIHL on the one hand and the DIFL Scheme Creditors on the other and (ii) "In the Matter of Digicel Limited" concerning a scheme of arrangement under section 99 of the Bermuda Companies Act between DL and the DL Scheme Creditors (collectively, the "**Schemes**"), pending before the Supreme Court of Bermuda, Civil Jurisdiction (Commercial Court), 2023: Nos. 305 and 306, respectively (together, the "**Bermuda**

[1] The Debtors in these chapter 15 cases (the "**Chapter 15 Cases**"), along with each Debtor's registration number, are: Digicel International Finance Limited (02649); Digicel Intermediate Holdings Limited (55586); and Digicel Limited (53898). The Debtors' registered office and mailing address is Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda.

[2] Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

Proceedings"), for entry of a final order (this "**Order**"), pursuant to sections 105(a), 1504, 1507, 1509, 1510, 1515, 1517, 1520, 1521, 1522, and 1525(a) of title 11 of the United States Code (the "**Bankruptcy Code**"), (a) granting the Motion and recognizing the Bermuda Proceedings as "foreign main proceedings" (as defined in section 1502(4) of the Bankruptcy Code) of the Debtors, pursuant to section 1517 of the Bankruptcy Code, all relief included therewith as provided in section 1520 of the Bankruptcy Code, and related relief under section 1521(a); (b) finding that the Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and that the Foreign Representative is authorized to act on behalf of the Debtors for purposes of the Chapter 15 Cases; (c) entrusting the Foreign Representative with the power to administer, realize, and distribute all assets of the Debtors within the territorial jurisdiction of the United States; (d) recognizing and enforcing the Schemes in the United States and giving full force and effect, and granting comity in the United States, to the Sanction Orders, including, without limitation, giving effect to the Releases set forth in the Schemes and to allow the Foreign Representative, the Debtors and their respective expressly authorized representatives and agents to take actions necessary to consummate the Schemes and transactions contemplated thereby; (e) permanently enjoining all entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative, the Debtors and their respective expressly authorized representatives and agents from (i) commencing, continuing, or taking any action in the United States that contravenes or would interfere with or impede the administration, implementation, and/or consummation of the Bermuda Proceedings, Schemes, or Sanction Orders including, without limitation, to obtain possession of, exercise control over, or assert claims against the Debtors or their property or (ii) taking any action against the Debtors or their property located in the territorial jurisdiction of the United States to recover or offset any debt

or claims that are assigned, subrogated, discharged, extinguished, novated, canceled, or released under the Schemes (including as a result of the laws of Bermuda or other applicable jurisdiction, as contemplated under the Schemes) or the Sanction Orders; (f) authorizing and directing the Directed Parties and any successor trustees or agents to take any and all actions necessary to give effect to the terms of the Schemes and transactions contemplated thereby; (g) exculpating and releasing the Directed Parties from any liability for any action or inaction taken in furtherance of and/or in accordance with this Order or the Schemes, except for any liability arising from any action or inaction constituting gross negligence, actual fraud, or willful misconduct as determined by the Court; and (h) granting such other and further relief as the Court deems just and proper, all as more fully set forth in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion, the Foreign Representative Declaration, Foreign Law Declaration and all other pleadings and papers in these cases establishing just cause to grant the relief set forth herein and that such relief is in the best interests of the Debtors and their estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

THIS COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings 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. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P) and this Court has the statutory and constitutional authority to issue a final ruling with respect to this matter. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative, in his capacity as the Foreign Representative of the Debtors, has standing to make the Motion.

D. The Debtors have property and property rights within this District, and therefore, the Debtors are eligible to be debtors in chapter 15 cases pursuant to sections 109 and 1501 of the Bankruptcy Code.

E. The Foreign Representative is the duly appointed "foreign representative" of the Debtors within the meaning of section 101(24) of the Bankruptcy Code.

F. The Chapter 15 Cases were properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code, and the Foreign Representative has complied with section 1515 of the Bankruptcy Code and Bankruptcy Rules 1007(a)(4) and 2002 (except to the extent compliance with Bankruptcy Rule 1007(a)(4) has previously been waived by this Court).

G. Due and proper notice of the Motion and Hearing have been provided in accordance with the *Order Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9007 Scheduling Hearing and Specifying Form and Manner of Service and Notice* [ECF No. ·] (the "**Scheduling Order**") and in compliance with the requirements of Bankruptcy Rule 2002(q), and no other or further notice need be provided.

H. The Bermuda Proceedings are "foreign proceedings" within the meaning of section 101(23) of the Bankruptcy Code.

I. The Bermuda Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

J. Bermuda is the center of main interest of the Debtors, and accordingly, the Bermuda Proceedings are "foreign main proceedings" within the meaning of section 1502(4) of the Bankruptcy Code and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

K. The Foreign Representative and the Debtors, as applicable, are entitled to the relief available pursuant to section 1520 of the Bankruptcy Code and to additional assistance and discretionary relief (including recognition and enforcement of the Schemes, the Releases contained therein, and the Sanction Orders) pursuant to sections 1507 and 1521(a) of the Bankruptcy Code, to the extent set forth in this Order and subject to the limitations set forth in this Order.

L. The Foreign Representative and the Debtors, as applicable, are entitled to the Court's cooperation under section 1525(a) of the Bankruptcy Code in implementing the Schemes in the form of relief granted by this Order on the terms provided herein. The terms of the Scheme before the Bermuda Court provided creditors and parties in interest with appropriate due process and are not manifestly contrary to U.S. public policy.

M. The relief granted hereby is necessary and appropriate to effectuate the purposes and objectives of Chapter 15 of the Bankruptcy Code and to protect the Debtors and the interests of their creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code.

N. The relief granted hereby (a) is essential to the success of the Bermuda Proceedings and Schemes; (b) is an integral element of the Bermuda Proceedings and the Schemes, and is integral to their effectuation; and (c) confers material benefits on and is in the best interests of the Debtors, their creditors and parties in interest.

O. Absent the relief granted hereby, the Bermuda Proceedings and the Debtors' efforts to consummate the Schemes could be impeded by the actions of certain creditors and other persons, a result that would be contrary to the purposes of Chapter 15 of the Bankruptcy Code as set forth, *inter alia*, in section 1501(a) of the Bankruptcy Code. If taken, such actions could threaten, frustrate, delay, and ultimately jeopardize the Bermuda Proceedings and implementation of the Schemes, and, as a result, the Debtors, their creditors, and such other parties in interest would suffer irreparable harm for which there is no adequate remedy at law.

P. Each injunction contained in this Order (a) is within the Court's jurisdiction; (b) is necessary and appropriate to the success of the Bermuda Proceedings; (c) confers material benefits on, and is in the best interests of, the Debtors and their creditors; and (d) is important to the overall objectives of the Debtors' restructuring.

Q. Specifically, the injunctive relief set forth in this Order is appropriate and necessary to prevent the risk that the Bermuda Proceedings may be thwarted by the actions of particular creditors, a result inimical to the purposes of Chapter 15 of the Bankruptcy Code as set forth in section 1501(a) of the Bankruptcy Code. Such actions could put in peril the Debtors' ability to successfully restructure.

R. The relief granted herein will not cause undue hardship or inconvenience to any party in interest, and to the extent that any hardship or inconvenience may result to such parties, it is

outweighed by the benefits of the requested relief to the Foreign Representative, the Debtors, their estates, and their creditors.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The petitions for recognition and other relief requested in the Motion are hereby GRANTED, as set forth in this Order.
2. All objections, if any, to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to this Court at the hearing on the Motion, if any, or by stipulation filed with this Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Foreign Representative is the duly appointed foreign representative of the Debtors within the meaning of section 101(24) of the Bankruptcy Code and is authorized to act on behalf of the Debtors in the Chapter 15 Cases.
4. The Bermuda Proceedings are granted recognition as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code.
5. All relief and protection afforded to a foreign main proceeding pursuant to section 1520 of the Bankruptcy Code is hereby granted to the Bermuda Proceedings, the Debtors, and the Debtors' assets located within the territorial jurisdiction of the United States, as applicable, including the application of section 362 of the Bankruptcy Code, which bars the commencement or continuation of actions against the Debtors and/or property of the Debtors located within the territorial jurisdiction of the United States. The Debtors and their respective successors, agents, representatives, advisors, and counsel are entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

6. The Sanction Orders, the Schemes (including the Releases), any amendments, modifications, and all schedules, exhibits, and other attachments to the Schemes, in each case subject to all terms, conditions, and limitations set forth therein, are hereby recognized, granted comity, and given full force and effect within the territorial jurisdiction of the United States and for purposes of U.S. law with respect to the Debtors, and each is binding on all creditors of the Debtors, including all Scheme Creditors, the Directed Parties, and any of their respective successors and assigns, subject to the terms of this Order.

7. Except as provided by or as may be necessary to enforce the terms of the Schemes, the Sanction Orders, or this Order, all entities (as such term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents are hereby permanently enjoined and restrained from:

   (a) execution against any of the Debtors' assets in contravention of the terms of the Schemes, the Sanction Orders, or this Order;

   (b) the direct or indirect commencement or continuation, including the issuance or employment of process or discovery, of a judicial, administrative, arbitral, or other action or proceeding, or to recover a claim (as such term is defined in section 101(5) of the Bankruptcy Code), which in either case in any way relates to, or would interfere with, the administration of the Debtors' estate in the Bermuda Proceedings or the solicitation, implementation, or consummation of any transaction contemplated by the Schemes;

   (c) taking or continuing any act to create, perfect, or enforce a lien or other security interest, setoff, or other claim against the Debtors or any of their property with

respect to any debt that is assigned, subrogated, discharged, extinguished, novated, canceled, released, or otherwise being restructured pursuant to the Schemes, including, for the avoidance of doubt and without limitation, the Existing Notes, the Existing Notes Indentures, and the Term Loans;

(d) transferring, relinquishing, or disposing of any property of the Debtors to any entity (as such term is defined in section 101(15) of the Bankruptcy Code) other than by the Foreign Representative and his authorized representatives and agents or in any way attempting to obtain possession or control over any property of the Debtors, in each case, other than in a manner consistent with and not in contravention of the terms of the Schemes, the Sanction Orders, or this Order;

(e) to the extent they have not been stayed pursuant to section 1520(a) and 362 of the Bankruptcy Code, asserting any claims, commencing, or continuing any action or proceeding (including, without limitation, bringing suit in any court, arbitration, mediation, or any judicial or quasi-judicial, administrative or regulatory action, proceeding, or process whatsoever), whether directly or by way of counterclaim (and from seeking discovery of any nature related thereto) concerning or otherwise relating to (i) the Debtors' property, assets, affairs, rights, obligations, or liabilities or (ii) any debt or claims that are assigned, subrogated, discharged, extinguished, novated, canceled or released under the Schemes (including the Releases), the Sanction Orders, or as a result of Bermuda or other applicable law, including, for the avoidance of doubt and without limitation, the Existing Notes, the Existing Notes Indentures, and the Term Loans.

8. The Directed Parties are directed and authorized to take any and all lawful actions necessary to give effect to and implement the Schemes and the Sanction Orders and the transactions contemplated thereunder, including, without limitation, the cancellation and discharge of the Existing Notes and the Existing Notes Indentures, the issuance of the New Notes, subject to the terms and conditions of the documents under which they have or will be appointed to act, and entry into the Amended & Restated Credit Agreement. Further, the Directed Parties are hereby authorized to take any other lawful action as instructed by, and at the expense of, the Debtors that may be necessary to cancel the Existing Notes.

9. Subject to the continuing effectiveness of the Schemes and the Sanction Orders, and upon the issuance of the New Notes, the Existing Notes Indentures, Existing Notes, instruments and certificates, and other documents evidencing the Scheme Creditors' claims and rights related thereto (including claims against the Existing Notes Trustee) shall be deemed satisfied, discharged, and canceled automatically and of no force or effect. Upon cancellation, all remaining positions on account of the Existing Notes on the books and records of the Existing Notes Trustee and DTC shall be terminated following the issuance of the New Notes.

10. The Existing Notes Trustee, including its agents, attorneys, successors, and assigns, are authorized and directed to provide DTC with the customary documentation accepted by it, as applicable, in order to cancel and remove the Existing Notes from DTC's records, as contemplated by the Schemes.

11. The Directed Parties, including the Existing Notes Trustee, may conclusively rely upon and shall incur no liability and be exculpated and released from any liability for any action or inaction taken in connection with this Order, except for any liability arising from any action

or inaction constituting gross negligence, actual fraud, or willful misconduct, in each case as finally determined by this Court.

12. The Foreign Representative, the Debtors, and their respective expressly authorized representatives and agents in the United States are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order, including, without limitation, to implement the terms of the Schemes and related restructuring transactions and the Foreign Representative and the Debtors, as applicable, are authorized to use any property and to continue operating any businesses within the territorial jurisdiction of the United States.

13. The administration, realization, and distribution of all or part of the assets of the Debtors within the territorial jurisdiction of the United States is entrusted to the Foreign Representative, and the Foreign Representative is established as the exclusive representative of the Debtors in the United States pursuant to section 1521(a) of the Bankruptcy Code.

14. No action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the Schemes or any order entered in the Chapter 15 Cases or in any adversary proceedings or contested matters in connection therewith, shall be deemed to constitute a waiver of the immunity afforded the Foreign Representative pursuant to sections 306 and 1510 of the Bankruptcy Code.

15. Nothing herein shall enjoin, impair, or otherwise supplement or modify in any manner the rights of any party granted under the Schemes, and nothing herein shall modify the exclusive right of the Bermuda Court to hear and determine any suit, action, or proceeding and to settle any dispute which may arise out of the Bermuda Proceedings or any provision of the Schemes or Sanction Orders, or out of any action to be taken or omitted to be taken under the Schemes or Sanction Orders or in connection with the administration of the Schemes or Sanction Orders.

16. Notwithstanding any provision in the Bankruptcy Rules to the contrary, (a) this Order shall be effective immediately and enforceable upon entry; (b) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative is authorized and empowered, and may in his discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

17. A copy of this Order, confirmed to be true and correct, shall be served, within seven business days of entry of this Order, upon the Notice Parties, with such service being good and sufficient service and adequate notice for all purposes.

18. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation, implementation, enforcement, amendment, or modification of this Order.

Dated: [·], 2023
New York, New York

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE