

**PRACTICAL CONSIDERATIONS FOR
PROTECTING UNITED STATES-BASED ASSETS
OWNED BY NON-UNITED STATES DEBTORS**

by:

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With the ever-increasing trend toward global consolidation of businesses, it is inevitable that some companies with international holdings will fail or require access to the courts for reorganization efforts. With these failures it is becoming more challenging for such companies and/or their trustees efficiently to administer assets located outside of their borders. This article focuses on several United States based procedures, both judicial and nonjudicial, by which the non-United States debtor company or trustee² may maximize its recovery or protection of assets held in the United States. In order to implement this goal, non-United States trustees or administrators should be aware of the possible pitfalls awaiting those that do not fully understand the intricacies of the bankruptcy and insolvency laws in the United States.

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² For purposes of this article, it is assumed that a trustee under applicable non-United States insolvency law has been appointed to administer and liquidate the assets of the non-United States debtor which owns or controls United States-based assets or companies.

Judicial Procedures

The United States Bankruptcy Code³ “provides for a flexible approach to international insolvencies dependent upon the circumstances of the particular case [and] [i]f any philosophy can be attributed to the structure of the [Bankruptcy] Code it is that of deference to the country where the primary insolvency proceeding is located . . . and flexible cooperation in administration of assets.”⁴ A trustee for the non-United States debtor should be aware that the Bankruptcy Code may authorize it to commence a case in the United States ancillary to its proceeding pending in the non-United States debtor’s home jurisdiction in order to protect the debtor’s assets and the administration of the non-United States debtor’s bankruptcy case.⁵

There are several eligibility requirements that a non-United States trustee must meet in order to avail itself of the ancillary proceeding provision of Section 304 of the Bankruptcy Code. First and foremost, there must be a formal non-United States based insolvency or bankruptcy proceeding pending outside the jurisdiction of the United States. Furthermore, only a properly appointed “foreign representative” of the non-United States debtor, pursuant to the non-United States bankruptcy or insolvency proceedings, may file the request for an ancillary proceeding in the United States.⁶ However, it should be noted that the Bankruptcy Code defines both “foreign

³ See 11 U.S.C. §§ 101 *et seq.*, as amended (hereinafter referred to as the “Bankruptcy Code”).

⁴ *Hong Kong and Shanghai Banking Corp., Ltd. v. Simon (In re Simon)*, 153 F.3d 991, 998 (9th Cir. 1998).

⁵ See generally 11 U.S.C. § 304 (defining ancillary proceedings and setting forth the eligibility requirements and the scope of remedies available under such a proceeding). The full text of 11 U.S.C. § 304 is attached, for reference, as Appendix A.

⁶ See 11 U.S.C. § 304(a); see also *Goerg v. Parungao (In re Goerg)*, 844 F.2d 1562 (11th Cir. 1988) (finding that Section 304 of the Bankruptcy Code governing cases ancillary to foreign proceedings is applicable “where the entity that is the subject of the foreign proceeding qualifies for insolvency administration under foreign law, but does not fall within the Bankruptcy Code’s definition of ‘debtor’”).

representative” and “foreign proceeding” broadly.⁷ Therefore, relatively few non-United States foreign representatives encounter difficulties in filing ancillary proceedings pursuant to Section 304 of the Bankruptcy Code. This is not to say that ancillary proceedings are common in the United States. Nonetheless, the usefulness of ancillary proceedings should not be overlooked by non-United States debtors and their trustees as a tool to protect, administer, and recover assets held in the United States.

While the ancillary proceeding contemplated by Section 304 is not the exclusive option of a non-United States representative under the Bankruptcy Code, ancillary proceedings allow a non-United States representative or administrator to seek a cost-effective and efficient administration of the debtor’s assets held in the United States while the non-United States debtor’s case goes forward under non-United States insolvency laws.⁸ Trustees should note that the use of devices such as ancillary proceedings will allow the non-United States administrator or insolvency representative to marshal the assets the non-United States debtor corporation holds in the United States and prevent those assets based in the United States from being dissipated or seized by creditors located in the United States. Perhaps the greatest benefit of such an ancillary proceeding is the prevention of a “piecemeal distribution” of the insolvent corporation’s

Section 109 of the Bankruptcy Code dictates who may be a debtor. The full text of 11 U.S.C. § 109 is attached, for reference, as Appendix B.

⁷ Section 101(23) of the Bankruptcy Code defines “foreign proceeding” as a “proceeding whether judicial or administrative and whether or not under bankruptcy law, in a foreign [non-United States] country in which the debtor’s domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating the estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization.” 11 U.S.C. § 101(23). A “foreign representative” is defined in the Bankruptcy Code as a “duly selected trustee, administrator, or other representative of an estate in a foreign [non-United States] proceeding.” 11 U.S.C. § 101(24).

⁸ See *In re Kojima*, 177 B.R. 696, 700 (Bankr. D. Colo. 1995) (“A § 304 ancillary proceeding was conceived as a more efficient and less costly alternative to a full bankruptcy case. However, . . . Congress gave a foreign representative the option of commencing a full bankruptcy case in the United States if the estate is substantial enough to require a full case for proper administration.”) (quoting *Matter of Axona Int’l Credit & Commerce Ltd.*, 88 B.R. 597, 607 (Bankr. S.D.N.Y. 1988)).

assets in the United States.⁹ While the filing of an ancillary proceeding petition does not create a bankruptcy “estate” in the conventional sense of United States bankruptcy proceedings,¹⁰ ancillary proceedings allow the non-United States debtor, through a foreign trustee or administrator, to protect the non-United States debtor’s estate by warding off local creditors and securing the debtor’s assets held in the United States.

An ancillary proceeding is subject to several limitations compared to a “full scale” bankruptcy filing. For example, an ancillary proceeding will not invoke the “automatic stay” enjoyed by United States debtors under the Bankruptcy Code.¹¹ However, a United States bankruptcy court is given authority under Section 304 of the Bankruptcy Code to enjoin the commencement or continuation of various actions against the debtor or the debtor’s property held in the United States. Examples of such actions that may be enjoined are efforts either to obtain or enforce a judgment, to seize property of the debtor, located in the United States or to foreclose on its assets. Furthermore, as noted above, the institution of a Section 304 ancillary proceeding does not create an “estate” as is typically found in other bankruptcy cases.¹² For purposes of the ancillary proceeding provision of

⁹ *Koreag, Controle Et Revision S.A. v. Refco F/X Assoc., Inc. (In re Koreag, Controle Et Revision S.A.)*, 961 F.2d 341, 348 (2d Cir. 1992) (“The purpose of a § 304 petition is to prevent the piecemeal distribution of assets in the United States by means of legal proceedings initiated in domestic courts by local creditors.”).

¹⁰ However, keep in mind that a non-United States debtor may file a plenary bankruptcy (that is, a separate independent bankruptcy filing for the United States located company) case in the United States assuming it meets the eligibility requirements set forth in the Bankruptcy Code. *See* 11 U.S.C. § 109. A plenary bankruptcy has certain advantages (*e.g.*, protection under the “automatic stay,” as more fully described in footnote 11) over ancillary proceedings commenced under Section 304, but plenary bankruptcies are not only more complicated but also more costly than ancillary proceedings.

¹¹ Under the Bankruptcy Code, the “automatic stay,” among other things, prevents creditors of the United States-based entity from taking actions to commence or continue any actions to seize the assets of the United States-based company. *See generally* 11 U.S.C. § 362.

¹² Under the Bankruptcy Code, the commencement of a bankruptcy case creates an “estate” comprised of all interests the United States based debtor may have in property, wherever located and by whomever held, as of the commencement of the bankruptcy case, and any interest in property that the trustee may recover using the various avoidance powers laid out in the Bankruptcy Code. *See generally* 11 U.S.C. § 541(a).

the Bankruptcy Code, the estate of a non-United States debtor is determined and defined by the law of the jurisdiction in which the non-United States proceeding is pending.¹³ Thus, disputes over the ownership of the property may be subject to complex choice of law provisions. However, experienced United States counsel, working closely with a non-United States based trustee, can be of invaluable assistance in successfully resolving these issues.

As noted above, bankruptcy courts in the United States are given significant latitude to construct appropriate remedies under Section 304 of the Bankruptcy Code.¹⁴ Section 304(b) of the Bankruptcy Code authorizes bankruptcy courts in the United States (i) to enjoin the continuation of actions by creditors against the non-United States debtor's assets in the United States, (ii) to order turnover of the non-United States debtor's assets that have been seized or otherwise repossessed by the debtor's local creditors, (iii) to enjoin a dissipation of assets by the officers and directors of the United States-owned entity, (iv) to sell the assets held in the United States, and (v) to grant any other relief that the bankruptcy court deems appropriate, such as allowing the trustee or administrator to pursue fraudulent and preferential transfer claims as well as other litigation to establish rights and claims of creditors in estate property.¹⁵ Thus, to prevent creditors in the United States from seizing the debtor's locally held assets, the bankruptcy court may enter a variety of injunctions, both preliminary and permanent, pursuant to

¹³ *In re Koreag, Controle Et Revision S.A.*, 961 F.2d 341, 348 (2d Cir. 1992) (“For purposes of section 304, the estate of a foreign based debtor is defined by the law of the jurisdiction in which the [non-United States] proceeding is pending, with other applicable law serving to define the estate’s interest in particular property.”) (citations omitted).

¹⁴ *See* 11 U.S.C. § 304(b); *see also In re Koreag, Controle Et Revision S.A.*, 961 F.2d 341 (2d Cir. 1992).

¹⁵ *See generally* 11 U.S.C. § 304(b); *In re Kojima*, 177 B.R. 696 (Bankr. D. Colo. 1995) (granting Japanese administrator permission to commence ancillary proceedings to pursue, among other things, fraudulent or preferential transfer claims).

Section 304 of the Bankruptcy Code. In fact, bankruptcy courts have granted preliminary injunctive relief on a nationwide basis to effectuate the goals of ancillary proceedings.¹⁶ The protection afforded by nationwide injunctive relief is similar to the protection provided by the “automatic stay” under plenary bankruptcy proceedings.¹⁷ The bankruptcy court may enjoin actions against a non-United States debtor or its assets held in the United States. Further, bankruptcy courts have the power to enjoin the creation of liens that are sought to be placed on the debtor’s assets located in the United States.

Ancillary proceedings under the Bankruptcy Code are intended to give bankruptcy courts maximum flexibility in light of non-United States insolvency laws and theories of international comity. This gives United States bankruptcy courts judicial authority to mold relief for the “foreign representative” and, more particularly, the “foreign debtor,” in “near blank check fashion.”¹⁸ Although “foreign representatives” (such as non-United States trustees or administrators) are oftentimes allowed to file ancillary proceedings to seek the above-described remedies, United States bankruptcy courts do not grant such relief automatically, and in fact, several guidelines must be met.¹⁹ A bankruptcy court, keeping in mind that the non-United States debtor deserves an “economical and expeditious administration” of its estate, will look to assure “(1) just treatment of all holders of claims against or interest in such [United States-based] estate;

¹⁶ See, e.g., *Evans v. Hancock, Rothert & Bunshort (In re Evans)*, 177 B.R. 193, 196-97 (Bankr. S.D.N.Y. 1995); *In re Laitasalo*, 193 B.R. 187, 189-90 (Bankr. S.D.N.Y. 1996).

¹⁷ See *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.* 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (reasons underlying automatic stay under Section 362 of the Bankruptcy Code are identical to those supporting preliminary injunctive relief under Section 304 of the Bankruptcy Code).

¹⁸ *In re Schimmelpennick*, 183 F.3d 347, 361 (5th Cir. 1999) (citing *In re Culmer*, 25 B.R. 621, 624 (Bankr. S.D.N.Y. 1982)); see also *Universal Cas. & Sur. Co. v. Gee (“In re Gee”)*, 53 B.R. 891, 896-97 (Bankr. S.D.N.Y. 1985) (in enacting Section 304(b) of the Bankruptcy Code, “Congress has recognized the bankruptcy courts’ need for considerable flexibility in confronting the multitude of complex and unforeseen problems that are associated with international bankruptcy cases.”).

¹⁹ See *In re Schimmelpennick*, 183 F.3d 347, 361-62 (5th Cir. 1999).

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such [non-United States] proceedings; (3) prevention of preferential or fraudulent dispositions of property of such estate; (4) distribution of proceeds of such estate substantially in accordance with the order prescribed [under the Bankruptcy Code]; (5) comity; and (6) if appropriate, the provision of an opportunity for a fresh start for the entity that such [non-United States] proceeding concerns.”²⁰

A thorough understanding of the various Bankruptcy Code provisions and insolvency laws of the United States will enable the non-United States debtor and trustee to protect the rights those parties may have in assets owned by the debtor but held in the United States. Because the seizure or repossession of assets located in the United States but owned by the non-United States debtor may have damaging effects on the viability of the non-United States debtor’s bankruptcy or insolvency proceedings, the institution of an ancillary proceeding by experienced United States counsel will aid in the protection of, and maximize the recovery or realization of, the debtor’s assets.

Nonjudicial Procedures

In addition to the judicial proceedings set forth above, there are also several nonjudicial strategies that experienced United States counsel should bring to the non-United States debtor’s or trustee’s attention. The judicial options set out above are usually more expensive and cumbersome than out-of-court solutions because of the costs and delays inherent in court proceedings (including the costs and delays of obtaining prior court approval before certain actions can be taken) and the relative inflexibility to take the prompt and decisive action sought by most parties. Because of the possible

²⁰ *Id.* at 362 (citing the factors set forth in 11 U.S.C. § 304(c)(1)-(6)).

short-comings of formal proceedings, the “foreign representatives” or non-United States trustee should also explore, with the assistance of experienced United States counsel, the possibility of taking control of those assets located in the United States through nonjudicial means.

Nonjudicial procedures have distinct advantages over judicial procedures in that they are typically less burdensome, cheaper, and more flexible. Not only can judicial procedures be relatively cumbersome, they can also increase the cost of administering the debtor’s assets, and are, by their nature, more time consuming than the nonjudicial procedures described below. The primary disadvantage of nonjudicial proceedings is the inability, without a court order, to guarantee prompt compliance with efforts to takeover control of assets based in the United States. Each situation will have to be evaluated to determine whether judicial or nonjudicial procedures may be more appropriate to the issues presented to the non-United States trustee.

For example, many times the principals of a non-United States company are also (either directly or indirectly) the controlling officers or directors of that company’s affiliates located in the United States. So while the non-United States principal may have lost control of the non-United States assets of the debtor, the principal still could retain control of assets located in the United States (through his or her position of control or influence over others as an officer or director of the United States corporation), and may attempt to dictate the control and perhaps dissipation of such assets unless prompt action is taken. Experienced United States counsel will recognize this immediate threat to the preservation of the assets located in the United States, and will first seek economical yet effective nonjudicial means to address this issue before resorting to judicial proceedings.

Other nonjudicial strategies are also available to the trustee or administrator. For instance, the trustee may seek to gain control of the debtor's assets by providing written notice to the officers and directors of the debtor's United States corporate entities advising them that they risk personal liability if there is any distribution or dissipation of the debtor's assets to the detriment of the debtor's creditors, without the prior written consent of the party who has taken control of the debtor.²¹ Obviously, the typical officer or director will be persuaded to cease activities that may expose themselves to personal liability.²² As part of this written notice, the non-United States debtor or trustee should clearly communicate the possibility of filing a formal judicial proceeding if its United States-based assets are not fully preserved and protected. The trustee could also give the officers and directors of the United States company the opportunity voluntarily to relinquish control of the non-United States-owned assets to the trustee or the trustee's United States-based designee. Consequently, if the officers or directors continue to refuse to relinquish control, such behavior may bolster the trustee's argument in a subsequently filed formal judicial proceeding that the officers or directors should be held

²¹ The underlying basis for this strategy is premised on general United States corporate law. Although each of the 50 states has enacted its own distinct corporate statutes to address business related issues, individual state corporation statutes generally provide that management of the corporation's affairs is to be undertaken by a board of directors. *See, e.g.*, Del. Code Ann. Tit. 8, § 141(a). The directors of the corporation owe fiduciary duties to the shareholders of the corporation, as the shareholders own the corporation and, in essence, have delegated the control of the corporation and its assets to the directors. Assuming that a non-United States debtor has assets held by a corporation located in the United States, the officers and directors of the United States corporation controlling such assets owe a fiduciary duty to the non-United States trustee who steps into the shoes of the non-United States debtor as shareholder. Further, when a United States corporation approaches insolvency itself, the officers and directors owe fiduciary duties to creditors as well as shareholders. *See, e.g., Credit Lyonnais Bank Nederland, N.V. v. Pathe Communications Corp.*, 1991 Del. Ch. LEXIS 215, *31 (Del. Ch. 1991).

²² Directors owe shareholders (and in certain instances creditors) duties of loyalty and care. The duty of loyalty requires officers and directors to act in good faith and in the best interests of the corporation. *See, e.g., Pepper v. Litton*, 308 U.S. 295 (1939). Under the duty of care, officers and directors are required to exercise the care that an ordinarily prudent person would exercise under similar circumstances. *See* Model Bus. Corp. Act § 8.30(a).

personally liable.²³ Finally, the non-United States trustee, through United States counsel, could prepare the appropriate documentation to be filed in a judicial proceeding in the United States to remove the existing directors and controlling officers, and to substitute a person loyal to the trustee should the officers and directors still refuse to relinquish control.²⁴ Although the success of this informal strategy is not guaranteed, it has worked in the past and is certainly worth the effort. In this way, formal proceedings may be avoided, control and management of the United States-held entities would be assured quickly and without the potentially damaging negative publicity attached to a formal ancillary bankruptcy proceeding, and maximum flexibility would be retained by the trustee to allow for the full administration of the United States-based assets.

In our experience assisting non-United States trustees or administrators of non-United States entities with United States-based assets, many time consuming and complicated issues often arise in the process of administering the assets held in the United States. Oftentimes the assets based in the United States, while owned outright by the non-United States debtor, are controlled through a formal United States entity (such as a corporation or partnership) whose assets must be liquidated through the sale or auction of its assets. Throughout this process, United States counsel can be invaluable in assisting the non-United States trustee to navigate successfully through the complicated issues that must be resolved. Such issues may include: (i) complying with United States laws involving employees and their claims; (ii) resolving local and non-United States tax

²³ The trustee may make such an argument based on the duties of loyalty and care required of officers and directors. *See*, note 22 *supra*.

²⁴ Generally, the bylaws or controlling organizational documents of a corporation recognize the power of shareholders to elect or choose the directors of the company. Hence, by controlling the corporation's board of directors, a controlling shareholder or group of shareholders could exercise substantial, if not complete, control over the corporation. However, the trustee must also keep in mind that

issues (including the need to consider how best to repatriate proceeds back to the debtor while minimizing the tax burden both in the debtor's home jurisdiction and the United States); (iii) preparing and filing the necessary documentation to dissolve the United States-based company; (iv) preparing and implementing all actions required to effectuate a liquidation of the United States-based assets through a sale or auction (including locating appraisers or other liquidation professionals); (v) working through the nuances involved in terminating employee retirement plan funds; (vi) determining how best to resolve all pending litigation against the United States-based entity; (vii) implementing steps to collect all amounts due to the United States-based entity; (viii) creating a procedure to equitably address claims asserted against the United States-based entity; and (ix) addressing the numerous issues that arise with respect to provisions for health, property and general liability insurance and claims related to the same.

Despite the identified advantages inherent in nonjudicial proceedings, nonjudicial proceedings are only feasible in those circumstances in which the trustee or administrator can quickly obtain operational control of the United States-based entity. Furthermore, depending on the circumstances, even if nonjudicial procedures are initially utilized, resort to formal judicial procedures may become necessary to address issues that arise. Because the scope and types of issues that may be faced by trustees or administrators are varied and unique, each case presents its own set of hurdles to overcome, hence no one formula or procedure is applicable to all cases. Consequently, it is critical that the non-United States debtor or trustee contact United States counsel promptly after the institution

if the United States corporation is insolvent, the officers and directors will owe fiduciary duties to the corporation's creditors as well.

of proceedings in the debtor's home jurisdiction to avoid any unnecessary dissipation or loss of assets held by the United States entity.

Conclusion

Obtaining the assistance of United States counsel knowledgeable about both judicial and nonjudicial solutions to the issues facing non-United States debtors with assets held in the United States is essential for the debtor to understand fully the wide range of available alternatives, to assess each of these alternatives in the context of the specific facts that exist, and to select the course of action most likely to maximize the recovery of assets for the non-United States debtor. Whether the course of action involves a judicial or nonjudicial procedure, or a combination thereof, can be determined after consultation with experienced United States counsel.

APPENDIX A

§ 304. Cases ancillary to foreign proceedings.

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may--

(1) enjoin the commencement or continuation of--

(A) any action against--

(i) a debtor with respect to property involved in such foreign proceeding; or

(ii) such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with--

(1) just treatment of all holders of claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

APPENDIX B

§ 109. Who may be a debtor.

(a) Notwithstanding 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.

(b) A person may be a debtor under chapter 7 of this title only if such person is not--

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity--

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable;
or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title.

(f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.