

Fill in this information to identify the case:

United States Bankruptcy Court for the  
 \_\_\_\_\_ District of Delaware  
 (State)

Case number (if known): \_\_\_\_\_ Chapter 15

Check if this is an amended filing

**Official Form 401**

**Chapter 15 Petition for Recognition of a Foreign Proceeding**

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

1. Debtor's name FC Windenergy GmbH

2. Debtor's unique identifier For non-individual debtors:

Federal Employer Identification Number (EIN) \_\_\_\_\_ Commercial Register

Other HRB 224986 Describe identifier (Handelsregister) at  
Local Court (Amtsgericht)  
Stuttgart, Germany

For individual debtors:

Social Security number: xxx - xx- \_\_\_\_\_

Individual Taxpayer Identification number (ITIN): 0 xx - xx - \_\_\_\_\_

Other \_\_\_\_\_ Describe identifier \_\_\_\_\_

3. Name of foreign representative(s) Holger Blümle as insolvency administrator

4. Foreign proceeding in which appointment of the foreign representative(s) occurred Insolvency Proceeding (Insolvenzverfahren),  
AG Esslingen, Germany, 5 IN 398/13

5. Nature of the foreign proceeding

Check one:

Foreign main proceeding

Foreign nonmain proceeding

Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding

A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.

A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.

Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?

No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.)

Yes

Debtor FC Windenergy GmbH Case number (if any) \_\_\_\_\_

8. Others entitled to notice Attach a list containing the names and addresses of:  
(i) all persons or bodies authorized to administer foreign proceedings of the debtor,  
(ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and  
(iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

9. Addresses Country where the debtor has the center of its main interests: Germany  
Debtor's registered office: Curlestrasse 2  
Number Street  
P.O. Box  
70563 Stuttgart  
City State/Province/Region ZIP/Postal Code  
Germany  
Country

Individual debtor's habitual residence: \_\_\_\_\_  
Number Street  
P.O. Box  
City State/Province/Region ZIP/Postal Code  
Country  
Address of foreign representative(s): Paulinenstrasse 41  
Number Street  
P.O. Box  
70178 Stuttgart  
City State/Province/Region ZIP/Postal Code  
Germany  
Country

10. Debtor's website (URL) \_\_\_\_\_

11. Type of debtor Check one:  
 Non-Individual (check one):  
 Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.  
 Partnership  
 Other. Specify: German limited liability company  
(Gesellschaft mit beschränkter Haftung)  
 Individual

Debtor FC Windenergy GmbH Case number (if known) \_\_\_\_\_

12. Why is venue proper in this district?

Check one:

Debtor's principal place of business or principal assets in the United States are in this district.

Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:

If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:

13. Signature of foreign representative(s)

I request relief in accordance with chapter 16 of Title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

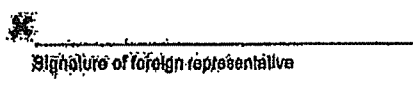


Holger Blümle

Signature of foreign representative

Printed name

Executed on January 11, 2016  
MM / DD / YYYY

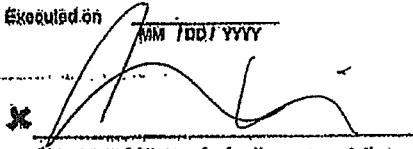


Signature of foreign representative

Printed name

Executed on \_\_\_\_\_  
MM / DD / YYYY

14. Signature of attorney



Date January 11, 2016

MM / DD / YYYY

Signature of Attorney for foreign representative

Adam Hiller

Printed name:  
Hiller & Arban, LLC

Printed name:  
1600 North French Street, Second Floor

Number Street:  
Wilmington

DE 19801

State ZIP Code

(302) 442-7676

contact@hillerarban.com

Contact phone Email address

4105

DE

Bar number

State

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FC WINDENERGY GMBH,

Debtor.

Chapter 15

Case No. \_\_\_\_\_

**Objection Deadline: TBD**

**Hearing Date: TBD**

**VERIFIED PETITION FOR RECOGNITION AND CHAPTER 15 RELIEF**

Holger Blümle, in his capacity as the duly appointed German Insolvency Administrator (*Insolvenzverwalter*) and foreign representative (the “Foreign Representative”) of FC Windenergy GmbH (the “Debtor”), a debtor in a foreign proceeding pending before the Local Court (*Amtsgericht*)—Insolvency Court (*Insolvenzgericht*)—of Esslingen, Germany (the “German Court”), Case No. 5 IN 398/13 (the “German Proceeding”), respectfully petitions this Court for recognition as a foreign main proceeding under § 1517 of the United States Bankruptcy Code (the “Bankruptcy Code”) and relief in furtherance of that recognition under §§ 1520, 1521, and 1508 of the Bankruptcy Code, and in support hereof states as follows:

**PRELIMINARY STATEMENT**

1. The Debtor initiated the German Proceeding by filing an insolvency petition with the German Court, which then opened the German Proceeding with reference to the Debtor’s illiquidity. The German Court appointed the Foreign Representative as the insolvency administrator of the Debtor in the German Proceeding.

2. The Foreign Representative seeks recognition of the German Proceeding as a foreign main proceeding within the meaning of §§ 1517(b)(1) & 1502(4) of the Bankruptcy Code.

3. The Foreign Representative respectfully submits that the German Proceeding should be recognized by this Court because as required under § 1517 of the Bankruptcy Code, the Foreign Representative is a person or body and this Verified Petition meets the requirements of § 1515 of the Bankruptcy Code. As required by § 1515(b) of the Bankruptcy Code, this Verified Petition is accompanied by a certified copy of the German Court's decision commencing the German Proceeding and appointing the Foreign Representative as Insolvency Administrator of the Debtor in the German Proceeding (the "Commencement Order"), *see* Exhibit A to the Declaration of Dr. H. Philipp Esser In Support of Verified Petition For Recognition of a Foreign Main Proceeding (the "Esser Declaration," attached hereto as Exhibit 1). As required by § 1515(d) of the Bankruptcy Code, the Commencement Order has been translated into English and a copy of this translation has been provided with this Verified Petition. *See* Esser Declaration at Exhibit B. In accordance with § 1515(c) of the Bankruptcy Code, the Foreign Representative has filed a statement identifying all foreign proceedings with respect to the Debtor that are known to the Foreign Representative and there are none.

4. The Foreign Representative seeks relief in aid of the German Proceeding to protect and preserve the assets of the Debtor through, *inter alia*, the stay of certain litigation pending against the Debtor in the United States and effective participation in the liquidation of the Debtor's assets in the United States with the protections afforded to him and the Debtor by Chapter 15 and other relevant provisions of the Bankruptcy Code.

5. The Debtor has been named as a defendant in one pending lawsuit filed in the United States, which is explained below in greater detail. The Foreign Representative is entitled to have this litigation finally stayed against the Debtor. The Debtor is further entitled to a stay of any final disposition of its assets in the United States to enable the Foreign Representative to

protect and maximize the value of the Debtor's assets in the United States. *See, e.g.*, §§ 1501(a)(4) and 1520(a)(1) of the Bankruptcy Code.

6. This Petition satisfies the requirements of Chapter 15 of the Bankruptcy Code because the German Proceeding is a foreign proceeding as defined in § 101(23) of the Bankruptcy Code, the Foreign Representative is a foreign representative as defined in § 101(24) of the Bankruptcy Code, and all other requisites for recognition have been fulfilled. The Debtor's center of main interest is presumed to be (and in fact is) in Germany under § 1516(c) of the Bankruptcy Code because the Debtor's registered seat and its headquarters are located in Stuttgart (Germany). The majority of the Debtor's assets and the majority of the Debtor's creditors are also located in Germany. Additionally, as stated above, this petition satisfies the requirements of §§ 1515 and 1517 of the Bankruptcy Code mandating recognition. For these reasons, as more fully explained below, the Foreign Representative respectfully requests that the Court grant the relief requested through this Verified Petition.

#### **JURISDICTION**

7. This Court has jurisdiction over this case under 28 U.S.C. §§ 1334 and 157. This is a core proceeding in accordance with 28 U.S.C. § 157(b)(P).

8. The Foreign Representative has properly commenced this case under §§ 1504 and 1515 of the Bankruptcy Code.

9. Venue for this case is proper in the United States Bankruptcy Court for the District of Delaware under 28 U.S.C. §§ 1410(1) and 1410(3).

10. The statutory bases for the relief requested in this Verified Petition are §§ 101(23), 101(24), 105, 1502, 1504, 1509, 1510, 1512, 1515, 1516, 1517, 1520, 1521, 1522, and 1524 of the Bankruptcy Code.

**BACKGROUND**

**A. The Debtor's Business and Operations**

11. The Debtor is a limited liability company (*Gesellschaft mit beschränkter Haftung*) established under German law, founded in 2000 as FC Development GmbH and registered in the commercial register at the Local Court (*Amtsgericht*) Stuttgart under no. HRB 224986. In 2007, the Debtor's name was changed from FC Development GmbH to its current name: FC Windenergy GmbH. The Debtor's registered place of business was Esslinger Str. 11-15, Wolfschlugen, Germany (hence the venue at the Insolvency Court of *Esslingen*) until 2014, and has been Curie Str. 2, Stuttgart, Germany since that time.

12. Prior to the insolvency proceedings, the Debtor was an intermediate holding company of the Windreich Group founded by the German entrepreneur and the Debtor's long time managing director, Willi Balz. The parent company of the Windreich Group is Windreich GmbH, the sole shareholder of the Debtor. Willi Balz and Windreich GmbH are also in insolvency in Germany. Windreich GmbH operated in the legal form of a German law stock corporation (*Aktiengesellschaft – AG*) as Windreich AG between 2010 and 2013.

13. The Debtor's business was to develop, construct (as general contractor), operate, buy and sell wind energy plants, including managing and representing other companies. The Debtor holds various subsidiaries or participations, among them Natenco LLC ("Natenco"), Arthur LP (Canada), and a participation in Nordsee Offshore MEG 1 GmbH, developing the approx. 400 MW offshore wind project *Merkur*. In addition to other assets, the Debtor also used to hold certain wind energy plants directly, which have already been sold by the Foreign Representative. Except for project *Merkur*, the Debtor has essentially ceased its operations and the Foreign Representative is winding down the Debtor's former business.

14. When the Debtor filed for insolvency in Germany, it had six employees. As of October 6, 2015, it has two employees.

15. In 2013, the Debtor's business experienced increasing economic and liquidity pressure, in particular as its largest project—the offshore project *Merkur*—faced delays. The Debtor retained a German restructuring specialist, Werner Heer, as managing director and CRO in September 2013. On September 5, 2013, Windreich GmbH, the top holding company in the Windreich Group and the Debtor's main source of financing at that point, filed for insolvency. In November 2013, the group's founder and managing director Willi Balz was removed from his position as the Debtor's managing director. Werner Heer currently remains the sole managing director of the Debtor.

**B. The Debtor's German Proceeding**

16. The Debtor filed for insolvency in the German Court on November 22, 2013. On November 25, 2013, the German Court appointed the Foreign Representative as the preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*) and entered certain additional preliminary injunctive orders for the protection of the Debtor's estate, in particular, subjecting dispositions over the assets of the Debtor to the approval of the preliminary insolvency administrator and ordering the Debtor's creditors only to make payments to the preliminary insolvency administrator.

17. On February 1, 2014, the German Court ordered the commencement of the (permanent) insolvency proceedings, appointed the Foreign Representative as (permanent) insolvency administrator and entered certain additional preliminary injunctive orders for the protection of the Debtor's estate, in particular, subjecting dispositions over the assets of the Debtor to the approval of the preliminary insolvency administrator and ordering the Debtor's creditors only to make payments to the preliminary insolvency administrator.



18. The purpose of insolvency proceedings in Germany is defined in Section 1 of the German Insolvency Code (*Insolvenzordnung–InsO*), entitled “Objectives of Insolvency Proceedings,” which states: “The purpose of insolvency proceedings is the collective satisfaction of the debtor’s creditors through realisation of the debtor’s assets and distribution of the proceeds or through agreement on an alternative arrangement in an insolvency plan, particularly in order to maintain the enterprise. Debtors who have acted in good faith will be given the opportunity to have their remaining debts discharged.” InsO § 1.<sup>1</sup> “Insolvency proceedings cover all of the assets which belong to the debtor at the time when the proceedings are commenced and which the debtor acquires during the proceedings (insolvency estate).” InsO § 35(1). By effect of the Commencement Order, the Foreign Representative is vested with the permanent power of administration of the Debtor and has the sole power and ability to dispose of the Debtor’s assets InsO § 80(1).<sup>2</sup> The insolvency administrator is responsible for the reorganization or liquidation of the Debtor, reviews the claims filed and distributes the proceeds to the insolvency creditors. “The insolvency administrator is subject to the supervision of the insolvency court. The court may request that the insolvency administrator provide specific information or a status and management report at any time”. InsO § 58(1). The creditors have elected a creditors’ committee with the following members: (i) Südwestbank AG, represented by Mr. Christoph Knoss, (ii)

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<sup>1</sup> The English translations of the provisions of the German Insolvency Code cited herein are taken from the annual publication “Insolvency and Restructuring in Germany – Yearbook” edited and published by the Foreign Representative’s law firm, Schultze & Braun. See Esser Declaration at Exhibit E for a compilation of all provisions of the German Insolvency Code cited in this Petition in German and translated into English. The 2015 Yearbook is available for download at [http://www.schubra.de/en/publications/books/insolvency\\_yearbook\\_2015.php](http://www.schubra.de/en/publications/books/insolvency_yearbook_2015.php).

<sup>2</sup> InsO § 80(1) provides: “As a result of commencement of insolvency proceedings the right of the debtor to manage and dispose of the assets of the insolvency estate vests in the insolvency administrator.”

Bank J. Safra Sarasin, represented by Dr. Sven Schelo, attorney, and (iii) Dr. Stefan Krauss, attorney.

19. A certified copy of the decision commencing the German Proceeding and appointing the Foreign Representative as Insolvency Administrator of the Debtor on an interim basis in the German Proceeding is attached to the Esser Declaration as Exhibit A.1. A certified copy of the decision commencing the German Proceeding and appointing the Foreign Representative as Insolvency Administrator of the Debtor on a final basis in the German Proceeding is attached to the Esser Declaration as Exhibit A.2. Immediately following the copies of the orders in each exhibit are respective translations as Exhibit B.1 and Exhibit B.2.

**C. The Debtor's Capital Structure, Assets and Liabilities**

20. The Debtor's last audited annual statement was prepared for the financial year (calendar year) of 2011 and the last unaudited annual statement for the financial year of 2012. In the audited 2011 annual statement, as of the end of 2011, the Debtor reported a total of € 201.6m in assets. As of the end of 2011, the Debtor reported liabilities of € 197.8m and reserves of € 2.52m, and equity valued at € 1.3m.

21. The insolvency administration of the Debtor has estimated the value of the assets of the estate (to the extent not subject to third-party rights), taking into account the legal and economic risks regarding the liquidation of the assets. The facts underlying this estimate are set out in more detail in the semiannual German interim reports of the insolvency administration (last interim report: October 6, 2015) and also available to the Debtor's creditors. As of October 6, 2015, the insolvency administration estimated the total value of the assets of the debtor at approximately € 17.7m.

22. As of October 6, 2015, approx. 169 creditors have filed claims with the insolvency administration in the aggregate amount of approximately € 285.9m. The insolvency

administration has acknowledged claims in an amount of approximately € 23.9m, it has acknowledged claims in an amount of approximately € 24.3m solely as recourse claims and it has rejected claims in an amount of approximately € 235.4m. Filings of claims in an amount of approximately € 2.3m have been withdrawn. Under German insolvency law, no bar date applies. Therefore, creditors continue to be entitled to file claims in the German insolvency estate throughout the German Proceeding.

23. To the knowledge of the Foreign Representative, the Debtor's only assets located in the U.S. are the Debtor's membership interest in and certain claims against Natenco. Upon information and belief, its only significant asset is a membership interest in Natenco LLC ("Natenco"), a Delaware limited liability company. The exact percentage of the Debtor's interest is still to be legally determined but has been assessed by Natenco to be 25%.

**D. Litigation Pending in the United States**

24. The Foreign Representative and the representatives of Natenco had corresponded and convened on various occasions since the initiation of the German Proceeding to resolve the open issues regarding Natenco but were not able to do so consensually. In particular, the Foreign Representative was unable to obtain the information he needed from Natenco on Natenco and its projects. The Foreign Representative also met with Natenco's third member, Tim Kittelhake, to discuss possible a consensual resolution of the present issue and other issues (pending separately between Tim Kittelhake and the Foreign Representative regarding Tim Kittelhake's activities in other legal entities of the Windreich Group). As of today, no resolution has been reached.

25. On June 15, 2015, Natenco filed a complaint against the Foreign Representative, the Debtor and Tim Kittelhake in the State of South Carolina—Richmond County—before the Court of Common Pleas (the "Court of Common Pleas"). By summons of the same date with case no. 2015CP4003481, the Debtor and the Foreign Representative were ordered to answer

within thirty days after service (the complaint together with the summons are hereinafter referred to as the “Natenco Complaint”).

26. Natenco at first did not serve process under the Hague Conference’s Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Convention”), requiring translated documents to be served through a German Central Authority. Instead, Natenco simply had a copy of the Natenco Complaint (without German translation) sent to Natenco’s German co-counsel, Alexander Diem, Azenbergstr. 19, Stuttgart, attorney, who instructed a German bailiff to deliver the documents to the Debtor and the Foreign Representative. Only on December 17, 2015 did the Debtor and the Foreign Representative each receive a copy of the Natenco Complaint translated into German and served through the relevant German Central Authority.

27. Exhibit C to the Esser Declaration contains a true and correct copy of the Natenco Complaint as received by the Debtor and by the Foreign Representative in copy from Natenco.

28. On September 3, 2015, the Debtor filed a motion with the Court of Common Pleas to dismiss the Natenco Complaint. On October 28, 2015, Tim Kittelhake filed an answer to the Natenco Complaint.

29. As far as the Debtor and the Foreign Representative know, the Court of Common Pleas has not set a final date for a hearing on the Debtor’s motion to dismiss.

**1. The Membership Interests in Natenco**

30. Natenco was founded in 2009 and Natenco’s business has been, *inter alia*, to develop wind energy projects in North America.

31. The original members of Natenco were Ingo Stuckmann, Reiner Borgmeyer and Thomas Tschiesche holding together a 50% membership interest, Windreich GmbH holding a 40% membership interest and Tim Kittelhake and Dr. Gerhard Schmid holding each a 5%

membership interest. In 2009, Stuckmann, Tschiesche and Borgmeyer transferred their membership interest to the remaining members, leaving Windreich GmbH (the Debtor's sole shareholder) with an 80% membership interest, Tim Kittelhake with a 10% membership interest and Dr. Gerhard Schmid with a 10% membership interest. On December 31, 2009, Windreich GmbH transferred its membership interest (80%) to the Debtor. On January 1, 2010, Dr. Gerhard Schmid transferred his membership interest (10%) to the Schmid GbR, a German law partnership (*Gesellschaft bürgerlichen Rechts*) which the Foreign Representative believes to be controlled by Dr. Gerhard Schmid and his son, Michael Schmid.

32. Pursuant to a sale and assignment agreement dated July 16, 2012, the Debtor—represented by German national and resident Tim Kittelhake, its then managing director—sold and assigned 55% of the Debtor's membership interest in Natenco to Tim Kittelhake himself for a cash purchase price of € 550,000 (the "Membership Interest Sale"). By set-off agreement dated September 28, 2012 between Tim Kittelhake, the Debtor and Windreich GmbH (then *sub nom* Windreich AG), the payment of the purchase price for the Membership Interest Sale was effected by set-off with (separately disputed) outstanding remuneration claims of Tim Kittelhake against (then) Windreich AG (the "Set-Off"). On October 1, 2012, Tim Kittelhake, the Debtor and the Schmid GbR executed an Assignment Deed in respect of the Membership Interest Sale (*see* Esser Declaration at Exhibit D). This transaction left Tim Kittelhake with a 65% membership interest and the Debtor with a 25% membership interest in Natenco.

33. To the knowledge of the Foreign Representative, Natenco is currently managed by the son of Gerhard Schmid, Michael Schmid, and Gerhard Schmid.

**2. The Debtor's Lack of Information and Insight into Natenco**

34. As an official appointed by the German Court, the Foreign Representative has the statutory duty to register, monitor, control and protect the assets of the estate from any harm and

loss. *See* InsO § 148(1).<sup>3</sup> The Debtor holds a participation in Natenco of either 80% or 25%, depending on whether the Foreign Representative will avoid or otherwise nullify the alleged Set-Off and/or the Membership Interest Sale. Thus, the Debtor's membership interest in Natenco has a significant value which the Foreign Representative needs to be informed about in order to protect the insolvency estate adequately.

35. Since the beginning of the German Proceeding, the Foreign Representative has been requesting detailed information from Natenco regarding Natenco's finances in general and regarding the status, the value and the marketing strategy for its remaining projects. However, in spite of the Debtor's various attempts, Natenco is only providing the Debtor with selected and limited information—if at all—which does not enable the Foreign Representative to have a reasonably clear and detailed view on the status and value of the Debtor's membership interest in Natenco.

36. The Debtor has no clear view on the financial situation at Natenco. Natenco provided the Debtor with unaudited annual reports of Natenco for 2011-2013 which show a steep reduction of the value of the Debtor's capital account in Natenco (from approx. US\$3.7 million at the end of 2011 to a deficit of approximately US\$581,000 at the end of 2013). As far as the Foreign Representative is aware, the Debtor's loans to Natenco have been eliminated from the balance sheet. Natenco never disclosed background information or explained to the Debtor why—according to the annual reports—the value of the Debtor's membership interest lost value so dramatically and why the Debtor's loans were eliminated. The Foreign Representative has not been given the opportunity to review the unaudited annual statements, which the Foreign

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<sup>3</sup> InsO § 148(1) provides: "After commencement of the insolvency proceedings the insolvency administrator shall immediately assume possession and management of all the assets belonging to the insolvency estate." *See* Esser Declaration at Exhibit E.

Representative assumes are incorrect, or the underlying capital transactions. Natenco never provided the Debtor or the Foreign Representative with annual reports for 2014 or after.

37. In addition, the Foreign Representative is missing important information on the value of the remaining projects. To the knowledge of the Debtor, Natenco has abandoned most of its wind energy projects except for the project Grey Highlands in Canada, which Natenco owns or owned through subsidiaries (“Grey Highlands”). While Natenco refused to pass on relevant and up-to-date information on its projects to the Foreign Representative, Natenco sold the project Grey Highlands to an investor associated with the Canadian Capstone Group without seeking the Debtor’s consent. To the knowledge of the Debtor, Natenco may receive proceeds from the sale of Grey Highlands between CAN\$4m to \$10m, which could result in a significant return from the project to Natenco’s members including the Debtor.

38. To the knowledge of the Debtor, Natenco may also still be able to receive some value from the other projects which have been abandoned. However, Natenco does not give the Debtor a clear view of how much residual value remains in the abandoned projects, which oftentimes still have some value in the wind energy business, and how this value will be protected for the benefit of Natenco.

39. Furthermore, the Foreign Representative has reason to believe that the other members (directly or through third parties) are entering into, or have recently entered into, agreements with Natenco (or related entities) that award these members significant monthly fees and other consideration of questionable benefit to Natenco. Such agreements have not been concluded at arm’s length terms, while the Debtor and the Foreign Representative are practically excluded by the other members from reviewing or (dis)approving of such dealings to the detriment of Natenco and of the Debtor’s estate.

40. The Foreign Representative has been in discussions with Natenco in 2013 and 2014 on a possible settlement of the Debtor's economic interest in Natenco. Such negotiations did not result in a consensual resolution, in particular, because the Foreign Representative concluded that Natenco had not provided him with sufficient information to enter into a settlement. Thereafter, the Foreign Representative requested numerous times to receive more information from Natenco about its projects and about any costs that might limit future distributions to the members. Natenco occasionally provided some information to the Debtor, but always withheld relevant information, for example, regarding the purchase price agreed in the Grey Highlands project, transaction and administrative costs, and the estimated future distributions to the members.

41. This is even more the case if the Debtor here holds 25% and may be entitled to an additional 55% of the membership interests. The statute does not hand over the company to the minority members without any form of compensation for the member holding the majority interest. The member or assignee continues to hold at least a protected economic interest in Natenco.

3. **Natenco's Request To Set Off with its Pre-Insolvency Claim against the Debtor's Post-Insolvency Right To Receive Distributions from Natenco**

42. In the Natenco Complaint, Natenco requests that the Common Court of Pleas declare that Natenco is entitled to set off a pre-insolvency claim that Natenco alleges it holds against the Debtor against a post-insolvency right of the Debtor against Natenco to receive certain distributions from Natenco, in particular from Natenco's proceeds from the sale of the Grey Highlands project. Under German insolvency law as well as under U.S. bankruptcy law, the right to set off claims in insolvency is limited in order to protect the insolvency estate. Therefore, the alleged setoff intended by Natenco is either void, avoidable, or invalid. Furthermore, whether



the Debtor's receivable can be set off against an alleged prepetition obligation of the Debtor should be determined by this Court and within the framework of a Chapter 15 proceeding and not before a non-bankruptcy state court.

**E. The Chapter 15 Filing**

43. As is evident from the above, the Foreign Representative has filed this case in the context of international comity as reflected in Chapter 15 of the Bankruptcy Code and to enable him to preserve and liquidate the Debtor's assets in the United States. The Foreign Representative is obligated to and will treat any creditor, whether in Germany, the United States, or any other country, equally and fairly according to mandatory German insolvency law. Any U.S. creditor has the right to file a proof of claim form in the German Proceeding. In particular, the German Proceeding does not establish any claims bar date so any U.S. creditor can still submit proofs of claims with the Foreign Representative throughout the pendency of the German Proceeding.

44. The Debtor seeks the assistance of this Court to have the Foreign Representative and the German Proceeding recognized as a foreign proceeding pursuant to § 1517 of the Bankruptcy Code and to have a stay in place in order to benefit from the necessary protection of the U.S. bankruptcy laws to protect and maximize the value of the Debtor's assets.

45. The Debtor is entitled to the protection of the Debtor's assets in the U.S. by staying the proceeding pending in South Carolina and any execution against the Debtor's assets, including by way of setoff. *See, e.g.*, § 1520(a)(1) of the Bankruptcy Code. The Foreign Representative petitions for formal recognition so that the interests of the Debtor and the Foreign Representative can be addressed to this Court in an orderly manner and are protected in the United States.

46. The Foreign Representative is entitled to participate in this Chapter 15 Case without otherwise submitting himself to the jurisdiction of any other court in the United States. *See* §§ 306, 1510, and 1524 of the Bankruptcy Code; *see also* § 105(a). The Foreign Representative therefore requests the stay of the litigation against the Debtor without exposing the Foreign Representative or the Debtor to claims or litigation against the Debtor that would otherwise have to be submitted in the German Proceeding.

**RELIEF REQUESTED**

47. The Foreign Representative seeks entry of an Order granting relief, including, but not limited to:

- (a) Recognizing the German Proceeding as a foreign main proceeding in accordance with §§ 101(23), 1502(4) and, 1517 of the Bankruptcy Code;
- (b) Recognizing the Foreign Representative as the Debtor's "foreign representative" as such term is defined in § 101(24) of the Bankruptcy Code and for all purposes under Chapter 15 of the Bankruptcy Code;
- (c) Granting the Debtor and the Foreign Representative the automatic relief as of right upon recognition of a foreign main proceeding pursuant to § 1520 of the Bankruptcy Code.
- (d) Granting the Debtor and the Foreign Representative the further additional relief as authorized by § 1521 (to the extent not already included under § 1520) of the Bankruptcy Code including, but not limited to:
  - i. staying the litigation concerning the Natenco Complaint;
  - ii. staying the execution, including by way of set-off, against the Debtor's assets located in the U.S.;
  - iii. limiting the jurisdiction of U.S. courts over the Foreign Representative in accordance with §§ 306, 1510 of the Bankruptcy Code;
  - iv. entrusting the Foreign Representative with the administration and realization of all or part of the assets of the Debtor within the territorial jurisdiction of the U.S. and with the subsequent distribution of the proceeds of the assets to the creditors of the Debtor and finding that the assets are sufficiently protected thereby;

- v. providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor;
- vi. otherwise granting comity and giving full effect to the Commencement Order and any other order issued and to be issued in the German Proceeding; and
- vii. awarding the Foreign Representative such other and further relief or assistance as the Foreign Representative may request from time to time pursuant to §§ 1507 and 1521 of the Bankruptcy Code and as this Court deems just and proper.

48. The Foreign Representative seeks this relief at this time, but expressly reserves his right to request other, additional, or further relief or assistance as may be just and appropriate by further application in accordance with § 1507 of the Bankruptcy Code or otherwise.

**BASIS FOR RELIEF**

49. The Trustee has satisfied each of the requirements for recognition of the German Proceeding and the Foreign Representative under Chapter 15 of the Bankruptcy Code. Pursuant to §§ 1515, 1517 of the Bankruptcy Code and as set forth in the declarations attached to this Petition:

a. The German Proceeding is a “foreign main proceeding” as required by § 1517(a)(1) and (b)(1) of the Bankruptcy Code: (i) The German Proceeding is a foreign proceeding pursuant to § 101(23) of the Bankruptcy Code because it is a collective judicial proceeding—the German insolvency proceeding (*Insolvenzverfahren*)—under a law relating to insolvency or adjustment of debt—the German Insolvency Code—in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court—the German Court—for the purpose of reorganization or liquidation, as provided in §§ 1502(4), 1517(b)(1) and 1516(c) of the Bankruptcy Code; and (ii) the German Proceeding is a foreign *main* proceeding pursuant to § 1502(4) of the Bankruptcy Code because the German Proceeding is pending in the

country—Germany—where the Debtor has the center of its main interests. In accordance with § 1516(c) of the Bankruptcy Code, the center of main interests of the Debtor is presumed to be where the Debtor has its registered office—here: first Esslingen until 2014 and since then Stuttgart, both in Germany—which is where the Debtor’s German Proceeding is pending. In fact, the Debtor’s registered office is also the location of the Debtor’s headquarters from where the Debtor and the Foreign Representative manage the remaining business and the winding down of operations.

b. The Foreign Representative qualifies as a “foreign representative” as required by § 1517(a)(2) of the Bankruptcy Code: As defined in § 101(24) of the Bankruptcy Code, Holger Blümle is a *person* authorized in a foreign proceeding—the German Proceeding—to administer the (primarily) *liquidation* of the Debtor’s assets *and* affairs *and* to act as the representative of the German Proceeding.

c. As required under § 1517(a)(3) of the Bankruptcy Code, the Verified Petition further meets the requirements of § 1515 of the Bankruptcy Code: (i) Together with this Verified Petition, the Foreign Representative has filed an Official Form 401 Chapter 15 Petition—thereby commencing a case under Chapter 15 pursuant to § 1504 of the Bankruptcy Code; (ii) the Petition is accompanied by a certified and translated copy of the orders commencing the German Proceeding and appointing the Foreign Representative as insolvency administrator over the Debtors’ assets (*see* Esser Declaration at Exhibits A & B, respectively), and (iv) concurrently herewith, the Foreign Representative has filed a statement identifying other foreign proceedings pending over the Debtor’s assets (which are none).

d. As further required under §§ 1517(a) & 1506 of the Bankruptcy Code, a recognition order would not be manifestly contrary to the public policy of the United States.

Indeed, granting the recognition order fosters cooperation in a cross-border insolvency and thus embodies United States public policy regarding foreign proceedings as defined in §§ 1501 (*Purpose and Scope of Application*) and 1508 (*Interpretation*) of the Bankruptcy Code.

e. Accordingly, courts in the U.S. routinely recognize insolvency proceedings under the German Insolvency Code as foreign proceedings under Chapter 15 of the Bankruptcy Code. *See, e.g., In re Solar Millennium AG*, case no. 12-11722 (KG), case filed: June 4, 2012, recognition order: June 15, 2012; *In re Reutax AG*, case no. 13-12135 (MFW), case filed Aug. 21, 2013, recognition order: Sept. 17, 2013; and from other courts: Bankr. E.D.Mo., *In re Arzberg-Porzellan GmbH*, case no. 13-44255, case filed: May 6, 2013, recognition order: June 12, 2013; Bankr. M.D.Fl., *In re Schramm*, case no. 14-12343, case filed: Oct. 21, 2014, recognition order: Nov. 4, 2014.

50. Therefore, the Foreign Representative has met the conditions necessary for the Court to grant the Petition.

#### **HEARING AND NOTICE**

51. The Foreign Representative requests that the Court set a date for a hearing (the “Hearing Date”) pursuant to § 1517(c) of the Bankruptcy Code to approve this Verified Petition, recognize the German Proceeding as a Foreign Main Proceeding, recognize the Foreign Representative and grant the related relief requested herein. If no objections are filed to this Petition by the date ordered for such objections, the Foreign Representative requests that the Court enter the Proposed Order granting the relief requested herein without a hearing. The Foreign Representative submits that when the Hearing Date has been set by the Court, notice will be given as reasonable and appropriate and consistent with Fed. R. Bankr. P. 2002(q).

#### **CONCLUSION**

WHEREFORE, the Foreign Representative petitions this Court for the relief requested

above and for such other relief as the Court deems just and proper.

Dated: January 11, 2016  
Wilmington, Delaware

Respectfully submitted,

HILLER & ARBAN, LLC

/s/ Adam Hiller

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