**The Public Policy Exception in the Model Law on Cross-Border Insolvency:
A Comparison of the United States and England**

*Ronit J. Berkovich*Weil, Gotshal & Manges LLP

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1. Introduction

The UNCITRAL Model Law on Cross-Border Insolvency (the “Model Law”) was intended to harmonize insolvency proceedings where a company has assets or creditors in numerous jurisdictions.[[1]](#footnote-1) Broadly speaking, it does that by directing that all of the assets of the company be administered in an insolvency proceeding in the jurisdiction where the company has its “center of main interest” (COMI), the “main proceeding.”[[2]](#footnote-2) The insolvency administrator can then file ancillary proceedings in the other jurisdictions to use local courts to direct the company’s assets and creditors to the foreign main proceeding, to be administered in accordance with the latter jurisdiction’s insolvency law, regardless of the differences in the two countries’ insolvency laws.[[3]](#footnote-3) It does that by mandating recognition of foreign main proceedings when certain basic criteria are satisfied (including that the proceeding must be a collective proceeding for the purpose of reorganizing or liquidating a company).[[4]](#footnote-4)

There is but one exception to that mandatory recognition – the public policy exception. It is the one hope a creditor has of persuading its local court to avoid the effect of the foreign insolvency proceeding if the mandatory conditions for recognition have been satisfied. The public policy exception provides that nothing in the Model Law requires a court in an ancillary proceeding to take an action if doing so would be “manifestly contrary” to that country’s public policy.

This exception could be quite significant. If interpreted broadly, it has the potential to controvert completely the purposes of mandatory recognition.[[5]](#footnote-5) In other words, if courts in ancillary proceedings were to find generally that any deviation from their own country’s insolvency laws is cause to deny recognition of a foreign main proceeding, this would transform the intended universalistic nature of cross-border proceedings into a more territorial approach.[[6]](#footnote-6) Instead of the company’s worldwide assets being centralized and treated in accordance with a single insolvency regime, they would be treated in accordance with each country’s particularized interests. This would prevent the Model Law from achieving its noble goals of maximization of value and minimization of disruption.[[7]](#footnote-7)

Luckily, it seems that many jurisdictions have heeded the direction of the Model Law to interpret the public policy exception very narrowly.

This paper analyzes how the courts in each of the United States and England have applied the public policy exception. They both seem to have done so narrowly, with the United States having more developed case law in this area and England seeming a bit more reluctant to apply it, but having nonetheless done so in a recent high profile case.

1. Overview of the Public Policy Exception

The public policy exception, which is set forth in Article 6 of the Model Law, provides: “Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the policy of this State.”

The Guide notes that the Model Law does not attempt to define public policy, as the concept “is grounded in national law and may differ from State to State.”[[8]](#footnote-8) The Guide recognizes that countries may give different meanings to the term “public policy,”[[9]](#footnote-9) but explains that the term “manifestly” means that the exception is to be “interpreted restrictively” and applied only “under exceptional circumstances concerning matters of fundamental importance for the enacting state.”[[10]](#footnote-10) Mere differences in the insolvency laws of different jurisdictions, on their own, should be insufficient to invoke the exception.[[11]](#footnote-11)

1. The United States

The United States enacted the Model Law as chapter 15 of the United States Bankruptcy Code (Title 11) (the “Bankruptcy Code”).[[12]](#footnote-12) Thus, chapter 15 incorporates both the mandatory recognition discussed above[[13]](#footnote-13) and the public policy exception (the latter in section 1506 of the Bankruptcy Code).

Chapter 15 has become a popular tool for companies restructuring outside the United States, and U.S. courts have had numerous opportunities to decide issues thereunder, including the public policy exception. Although objectors appear to raise the public policy exception frequently, research revealed only two cases where U.S. courts have refused to recognize a foreign main proceeding on the basis of the public policy exception and an additional two cases where U.S. courts have limited particular relief on the basis of the public policy exception. In the vast majority of cases where it has been raised, U.S. courts have rejected application of the public policy exception and have acted consistently with the Model Law’s mandate of a universalist approach based on comity.

* 1. General Approach of U.S. Courts Applying Public Policy Exception

U.S. courts, citing the Guide’s view of the public policy exception, have generally construed it narrowly.[[14]](#footnote-14) As the influential Third Circuit Court of Appeals noted in its seminal *ABC Learning Centres* opinion: “The public policy exception applies ‘where the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections’ or where recognition ‘would impinge severely a U.S. constitutional or statutory right.’”[[15]](#footnote-15)

In that case, the court rejected an unsecured litigation creditor’s argument that section 1506 should be applied to block recognition of an Australian liquidation proceeding because the debtors’ assets were fully secured, the appointed receiver would only represent the interest of secured creditors, and the unsecured creditors would not obtain a recovery.[[16]](#footnote-16) The court found “no exception” in chapter 15 “when a debtor’s assets are fully leveraged.”[[17]](#footnote-17)

The 2019 case of *Manley* Toys from the District of New Jersey provides a helpful example of how the courts generally approach the public policy question.[[18]](#footnote-18) In that case, facing U.S. litigation pressures, including a federal court in Minnesota having entered a large monetary judgment by a creditor (“Aviva”) against it, Manley Toy commenced a creditors’ voluntary liquidation in Hong Kong.[[19]](#footnote-19) A mere eleven days before the “Creditor Meeting” in Hong Kong, notice of such meeting was sent by regular mail, but not e-mail or fax, to all creditors, including Aviva, in compliance with Hong Kong law.[[20]](#footnote-20) A “Committee of Inspection (“COI”) was appointed at that meeting.

Aviva objected to recognition of the Hong Kong proceeding in the U.S. chapter 15 case, asserting that recognition would be manifestly contrary to the public policy of the United States under section 1506 of the Bankruptcy Code.[[21]](#footnote-21) The theme of its objection was that “the Debtor and its former principals ‘initiated the Hong Kong liquidation and the Chapter 15 case in bad faith,’ as ‘part of the principals’ long-running scheme to defy and undermine the U.S. judicial system,’” including through affiliates purchasing third party debt “to ensure control over the anticipated liquidation, and . . . Aviva’s marginalization from that process.”[[22]](#footnote-22) The bankruptcy court overruled the objections and granted recognition, and on appeal, the district court affirmed.

The court confirmed that a finding under section 1506 is only warranted under “exceptional circumstances” and applying it requires that a “high standard” be met.[[23]](#footnote-23) The court held that the late notice of the Creditors Meeting was not sufficient to support a finding that due process was violated for two reasons.[[24]](#footnote-24) First, the Hong Kong liquidators subsequently offered Aviva to join the COI, effectively remedying any prejudice Aviva may have suffered as a result of the late notice.[[25]](#footnote-25) Second, the court noted that “there is a procedure in place where a Hong Kong court could invalidate the liquidation if procedural requirements were not satisfied.”[[26]](#footnote-26)

The Court also rejected Aviva’s arguments that recognition would “‘improperly reward’ the Debtor for allegedly ‘deliberately disobeying’ U.S. court orders and ignoring [a judgment from the District of Minnesota], thereby ‘encourag[ing]’ other foreign companies to act similarly.”[[27]](#footnote-27) The court held that public policy did not mandate denying recognition even if the debtor had not complied with various orders from the Minnesota court and even if “one of the primary motivations in initiating the Hong Kong liquidation was to avoid the imposition of sanctions in the Minnesota” federal action.[[28]](#footnote-28) In doing so, the court rejected the comparison to the *Gold & Honey* case (discussed below), finding that there was no assertion “that any U.S. statute has been, or will be, violated in this case.”[[29]](#footnote-29) It also suggested, without holding, “that not any violation of U.S. statute will suffice to support the public policy exception, rather it may be that such statute must embody fundamental policy objectives, as the automatic stay statute does, and as the Wiretap Act and the Privacy Act do.”[[30]](#footnote-30)

Similarly, the bankruptcy court for the Southern District of New York recognized the foreign main proceeding and restructuring plan of Agrokor, a very large Croatian company (discussed below in more detail in the English law section). [[31]](#footnote-31) Although there were no objections to the recognition, the court closely examined whether recognition was contrary to public policy and held that it was not, even though several other jurisdictions had refused to recognize the Croatian proceedings and even though the court had reason to believe the English court would refuse to recognize any Croatian plan that sought to restructure English debt-governed documents (due to the *Gibbs* rule). Neither the fact that the Croatian process differed somewhat from what would be permitted in a chapter 11 case nor the fact that other countries might not recognize the plan were reasons to deny comity in the United States.[[32]](#footnote-32)

There are numerous other examples of U.S. courts rejecting the public policy exception, including (to name only a few):

* Rejecting arguments that an Irish proceeding violated U.S. policy due to (i) the Irish liquidators’ alleged lack of independence from the Irish Finance Minister, (ii) the alleged inability to challenge a transfer as a fraudulent transfer or assert a claim based on violation of transfer restrictions on a loan, (iii) the alleged discrimination against U.S. citizens, and (iv) an allegation that the Irish law would not grant creditors the same “fundamental rights” they would receive in U.S. bankruptcy courts.[[33]](#footnote-33) The court found no conflict between the applicable Irish law and U.S. law, but that even if one existed, it was insufficient merely to identify such a conflict, as the conflict must actually rise to the “manifestly contrary” standard.”[[34]](#footnote-34)
* Rejecting arguments that an Indian proceeding violated the public policy exception on the basis that unsecured creditors were not automatically included, noting that there was a procedure whereby unsecured creditors could be included.[[35]](#footnote-35)
* Rejecting arguments that the requirement that a wrongful death claim against the debtor be processed in a Canadian insolvency proceeding without a jury trial right violated public policy as the creditor would have been entitled to such a jury trial right in the United States.[[36]](#footnote-36)
	1. U.S. Cases Where Public Policy Exception Has Been Applied Successfully

As noted, research has revealed only two cases where the public policy exception has been applied to deny recognition of a foreign proceeding and two cases where it has been applied to limit relief being sought under chapter 15.

*Gold & Honey* was the first case where section 1506 was applied to deny recognition.[[37]](#footnote-37) In that case, the bankruptcy court denied recognition to an Israeli receivership proceeding filed on behalf of companies that already had chapter 11 cases pending in the United States.[[38]](#footnote-38) The court held that recognition would be manifestly contrary to U.S. public policy, because the Israeli proceedings were filed in violation of the automatic stay that went into effect upon the chapter 11 filing and the court’s orders relating to such stay.[[39]](#footnote-39) To hold otherwise would “reward and legitimize” such violations.[[40]](#footnote-40)

In *Toft*, the bankruptcy court found that a chapter 15 proceeding commenced in the United States for the sole purpose of assisting the German insolvency practitioner gain access to the debtor’s e-mail accounts stored on the servers of two internet service providers (“ISPs”) in the United States would be contrary to the public policy of the United States.[[41]](#footnote-41) The ISPs’ presence in the United States appeared to be the only connection to the United States.[[42]](#footnote-42) The court found that the relief sought would not only not be available in the United States, but would subject the party who carried it out to criminal prosecution, as it would violate privacy laws.[[43]](#footnote-43) The court was also offended by the fact that the relief was being sought without notice to the debtor.[[44]](#footnote-44)

In *In the Matter of Vitro S.A.B. DE C.V. (Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V.)*, the bankruptcy court denied recognition on the basis that the Mexican C*oncurso* plan violated section 1506 of the Bankruptcy Code (the appeals court upheld the decision denying recognition, but did not reach the section 1506 grounds).[[45]](#footnote-45) In that case, the bankruptcy court and appeals court found it inappropriate that the plan would release the guaranty claims of the debtor’s creditors against certain non-debtor subsidiaries, and therefore, refused to grant the request under section 1507 to use the court’s discretion to grant the “additional assistance” to enforce the non-consensual third party releases.[[46]](#footnote-46) Such releases are generally disfavored although not universally disapproved in U.S. bankruptcy proceedings.[[47]](#footnote-47) Among other relevant facts was the fact the debtor’s were only able to reach the threshold of majority creditor approval of the plan by including insider votes.[[48]](#footnote-48)

In *Qimonda*, the bankruptcy court held that recognition of an order in a German insolvency proceeding that would terminate a non-debtor’s intellectual property license from the debtor was manifestly contrary to U.S. policy under section 1506.[[49]](#footnote-49) The court noted that the U.S. Congress enacted section 365(n) of the Bankruptcy Code with the specific intent to protect the rights of licensees of intellectual property.[[50]](#footnote-50) On appeal, the Fourth Circuit Court of Appeals affirmed the decision (albeit based on section 1522 of the Bankruptcy Code, which requires a court to “ensure sufficient protection of creditors” when granting discretionary relief).[[51]](#footnote-51)

Perhaps best illustrating the push and pull involved in the public policy exception, the court acknowledged “the importance of Chapter 15 to a global economy” and stated that chapter 15 “represents a full commitment of the United States to cooperate with foreign insolvency proceedings,” but the court also hedged by noting that such commitment “is not untampered,” as manifested in section 1506 of the Bankruptcy Code, as well as in the court’s discretion with respect to the discretionary relief available under the statute.[[52]](#footnote-52)

* 1. United States – Final Analysis

On balance, the cases above demonstrate that it is quite hard for objectors to stand in the way of recognition by relying on section 1506. One could argue that there is some inconsistency in the courts’ application of the standard – for example, violation of court orders being sufficient in *Gold & Honey* but not in *Manley Toys,* or granting third party releases being sufficient in *Vitro* but denial of jury trial rights being insufficient in *Ephedra*. If anything, however, these cases show that courts very rarely deny relief on the basis of section 1506 even when U.S. public policy is clearly implicated (court orders, jury trial rights), although perhaps not egregiously violated. At least with respect to its narrow application of public policy exception, the United States appears to be a model for other countries to follow in subordinating national interests to the greater goals of international cooperation in cross-border insolvency proceedings.

1. England

Although courts in England have developed somewhat of a sullied reputation for “fairness” in the international insolvency arena for the seeming continued insistence on the hated *Gibbs* rule (as the New York bankruptcy court implied in the *Agrokor* case discussed above), at least in the area of the public policy exception, the English courts appear to be “playing nicely in the sandbox” with their follow courts in interpreting a narrow construction of the exception (at least where the *Gibbs* rule is not involved). To date, however, it appears only one English court has issued an opinion regarding the exception, *In the matter of Agrokor DD and in the matter of the Cross-Border Insolvency Regulations 2006*, High Court, Chancery Division, November 9, 2017 ([2017] EWHC 2791 (Ch.)) (hereinafter, “*Agrokor*”).

* 1. The CBIR

Great Britain (England, Wales, and Scotland) adopted the Model Law in its Cross-Border Insolvency Regulations 2006 (“CBIR”). The British government has expressed a view to the Model Law similar to that expressed in the United States:

The British Government has a commitment to the promotion of a rescue culture and supports the Model Law as an appropriate legislative tool to support this objective and the wider international stage. In addition, the implementation of the Model Law will be beneficial in serving the cause of fairness towards creditors who may be located anywhere in the world. We hope that it may also provide an example to other countries of our readiness to engage in a genuine process of cooperation in international insolvency matters and that our actions will encourage other countries to implement the Model Law…. As a result funds available for distribution to creditors, wherever they are located, should increase.[[53]](#footnote-53)

Notwithstanding the general respect for comity, however, “[i]t does not automatically follow that the order of the [foreign] court will be recognized [under the CBIR] and, if need be, enforced, outside [the foreign country.”[[54]](#footnote-54) To this end, the CBIR provides that “Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Great Britain or any part of it.”[[55]](#footnote-55)

* 1. *Agrokor* – General Principles

*Agrokor* was the first contested recognition application in the United Kingdom under the CBIR.[[56]](#footnote-56) In that case, the High Court of England & Wales determined that recognition of the Croatian insolvency proceeding of Agrokor was not contrary to the public policy of Great Britain. The government of Croatia had enacted the relevant law specifically to deal with Agrokor, given its national importance as the largest privately owned company in the country. A recognition proceeding was filed in England, as the company had English law debt and its major bank had commenced arbitrations in England.[[57]](#footnote-57)

Perhaps recognizing that as the first English court to decide the issue, it had an obligation to consider the full scope of the public policy exception, the court made several helpful pronouncements as to how English courts should think about it:

[T]hese types of public policy clauses are common in international conventions (see for example the Hague Conventions on private international law). The form including the word “manifestly” before “contrary” or “incompatible” is well known. The inclusion of the word “manifestly” must mean something more than mere contrariness or incompatibility. So it should be harder to demonstrate that something is *manifestly* contrary to public policy than it is simply contrary. What is not clear is how much harder. One view is that “manifestly” means “more serious”, rather like “gross” in the phrase “gross negligence”. Another view is that manifestly” does not add any further depth to the requirement. It is still the standard of being “contrary to public policy” after all. But it does add the need for *clarity*. Where there is any doubt or any confusion as to whether it is contrary to or incompatible with public policy, there cannot be anything “manifestly” contrary to public policy.[[58]](#footnote-58)

In determining the standard for the public policy exception, the court referred both to the Guide and the *Ashapura* decision from the United States (discussed above) to conclude that “the exception for manifest contrariness to public policy is to be narrowly construed.”[[59]](#footnote-59) Because, as the court in *Nordic Trustee ASA v. OGX Petroleo e Gas SA,* Re [2016] EWHC 25 (Ch); [2016] Bus L.R. 121 noted, “in the ordinary case,” recognition of a foreign proceeding is mandatory if the applicant can satisfy the requirements of Articles 15 and 17 of the Model Law, the public policy exception is intended to be “restrictively interpreted.”[[60]](#footnote-60)

The court further quoted the court from *Bud-bank Leasing SP zo o,* Re [2010] B.C.C. 255, which held that “The fact that foreign proceedings may differ from those of this country, as they invariably do, even in relation to creditors’ rights in respect of priorities, would not of itself be a reason to refuse relief (see, for example, the recent decision of the House of Lords in *McGrath v. Riddell [2008] UKHL 21* [better known as *Re HIH Casualty & General Insurance Ltd*. [2008] 1 W.L.R. 852].”[[61]](#footnote-61)

* 1. *Agrokor* – Application to Croatian Proceeding

Notwithstanding these broad pronouncements, the English court seemed to struggle with the issue of whether to grant recognition, but ultimately did so.

The objecting bank pointed to two ways in which the Croatian proceeding allegedly violated English public policy: (i) the English law requirement that creditors receive pari passu treatment in insolvency proceedings and (ii) the English law requirement that creditors should receive a right to object to their treatment in insolvency proceedings.[[62]](#footnote-62)

The court noted that there were conflicting English cases on the issue of the importance of the pari passu principle in English law. On the one hand was the case of *Bank of Credit and Commerce International (SA) (In Liquidation) (No. 10),* Re [1997] Ch. 213; [1997] 2 W.L.R. 172 [1996] B.C.C. 980, in which the English court refused to transfer funds from England to Luxembourg to the extent that the creditors’ setoff rights against the funds would not be recognized in the Luxembourg insolvency proceeding.[[63]](#footnote-63)

On the other hand was *Bank of Credit and Commerce International SA (In Liquidation) (No.3),* Re [1992] B.C.C. 715; [1993] B.C.L.C. 1490 (CA), which was decided prior to the enactment of the CIBR. The court there said that departure from the pari passu principle of distribution is acceptable where doing so is ancillary to the liquidator’s compromise powers under the relevant insolvency statute.[[64]](#footnote-64)

Similar to the latter case, in the *HIH* case referenced above, the House of Lords seemed torn as to whether to transfer assets in England to an Australian insolvency proceeding for distribution even though the Australian courts would give preference to certain insurance creditors in violation of the pari passu principle.[[65]](#footnote-65) Ultimately, the court allowed the funds to be transmitted in light of a particular statute that gave the court discretion to do so (but was inapplicable in the *Agrokor* situation).[[66]](#footnote-66) It is interesting, however, that even there, two judges appeared to disagree with the importance of the principle, as one judge expressed that “de minimis variations” from the pari passu principle should not prevent deference to a foreign insolvency proceeding, while another judge “in respectful disagreement” believed that English courts generally had no jurisdiction to deprive English creditors of pari passu rights.[[67]](#footnote-67)

The English court in the *Agrokor* case ended up side-stepping the issue by noting that it was only deciding whether to recognize the foreign proceeding, not whether to grant recognition to the settlement agreement (or other distribution mechanism) where the treatment of creditors (pari passu or otherwise) would actually be determined.[[68]](#footnote-68) The court also seemed comforted by the fact that the liquidator expressed an intent to apply the pari passu principle.[[69]](#footnote-69) However, the Court did note that giving priority to certain creditors is not necessarily a violation of public policy, given that the policy of pari passu principle can be overridden even in English cases, as discussed above.[[70]](#footnote-70)

On the creditor’s second contention, the court noted that although creditors did not have the right to object to the settlement, they did have the right to appeal, which was sufficient.[[71]](#footnote-71)

In general, the court made it clear that the fact that the main proceeding might be less favorable to certain creditors under English law is not necessarily a violation of public policy.[[72]](#footnote-72)

* 1. *Agrokor* –Unanswered Questions

It is unclear whether the English courts were given a chance to prove the New York bankruptcy court correct (or wrong) that based the *Gibbs* rule, the English courts would deny recognition of the Croatian restructuring/settlement plan to the extent it purported to cover English-law governed debt. Instead, it appears that the parties involved decided it would be safer to have the English-law governed debt restructured in an English scheme of arrangement, which was approved in 2019.[[73]](#footnote-73)

1. Conclusion

Courts in both the United States and England appear to adhere to the request of the drafters of the Model Law to construe the public policy exception narrowly to ensure that its goal of universality is achieved. Nevertheless, it seems England may be slightly more likely to invoke the public policy exception and deny recognition, especially when the foreign proceeding seeks to restructure English law governed debt.

1. Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross Border Insolvency, United Nations Commission on International Trade Law, United Nations, New York, 2014 (hereinafter, the “Guide”), I.A.1., pg. 19. [↑](#footnote-ref-1)
2. *Ibid.*, I.A.1., pg. 19 and IV.B.31., pg. 28; *In re ABC Learning Centres Ltd*., 726 F.3d 301, 306-307 (3d Cir. 2013) (“[A]ncillary proceedings bring people and property beyond the foreign main proceeding’s jurisdiction into the foreign main proceeding through the exercise of the [ancillary state’s] jurisdiction.”) (applying chapter 15 of the Bankruptcy Code (as defined below)). [↑](#footnote-ref-2)
3. *Ibid.*, I.A.3., pg. 19 (“The Model Law . . . provides a framework for cooperation between jurisdictions, offering solutions that help in several modest but significant ways and facilitate and promote a uniform approach to cross-border insolvency.”); *Ibid.*, IV.A.25., pg. 27. [↑](#footnote-ref-3)
4. *Ibid.*, IV.B.29., pg. 28. [↑](#footnote-ref-4)
5. *Ibid.*, at I.B.5-9. pg. 20-22 (explaining the problems with the prior system that led to the Model Law). [↑](#footnote-ref-5)
6. *ABC Learning Centres,* 726 F.3d at 306 (The court noted that the Model Law “reflects a universalism approach to transnational insolvency. It treats the multinational bankruptcy as a single process in the foreign main proceeding, with other courts assisting in that single proceeding.” This is in contrast to a “territorialism approach” where “a debtor must initiate insolvency actions in each country where property is found” and that property is seized and distributed “according to each country’s insolvency proceedings.”). [↑](#footnote-ref-6)
7. *Ibid.*at 301 (“UNCITRAL developed the Model Law . . . in response to the challenges of multinational bankruptcies where multiple insolvency regimes lacked effective mechanisms for coordination. Multiple systems limited the ability of any one bankruptcy regime to protected assets against dissipation, and allowed creditors to skip ahead of their priority be seizing assets in foreign jurisdictions.”). [↑](#footnote-ref-7)
8. Guide, V.101., pg. 52. [↑](#footnote-ref-8)
9. *Ibid.*, V.102., pg. 52. [↑](#footnote-ref-9)
10. Guide, V.104., pg. 52. The Guide also suggests that there is a growing recognition among states that the term “public policy” must be understood “more restrictively” in the arena of international cooperation than in domestic policy due to “the realization that international cooperation would be unduly hampered if ‘public policy’ were to be understood in an extensive manner.” *Ibid.*, V.103., pg. 52. [↑](#footnote-ref-10)
11. *Ibid.*, IV.B.30., pg. 28. [↑](#footnote-ref-11)
12. *ABC Learning Centres,* 726 F.3d at 306. [↑](#footnote-ref-12)
13. Section 1517 of the Bankruptcy Court provides that the bankruptcy court “shall” enter an order recognizing a foreign main proceeding if (i) it satisfies the requirements for a foreign main proceeding under section 1502, (ii) the foreign representative applying for recognition is a person or body, and (iii) the petition meets the requirements of section 1515 (logistical requirements for filing a petition). [↑](#footnote-ref-13)
14. *See, e.g., ABC Learning Centres*, 728 F.3d. at 309. [↑](#footnote-ref-14)
15. *Ibid.* at 309 (quoting *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 570 (E.D. Va. 2010)). [↑](#footnote-ref-15)
16. *Ibid.* at 308. [↑](#footnote-ref-16)
17. *Ibid.* [↑](#footnote-ref-17)
18. *ASI, Inc. v. Foreign Liquidators (In re Manley Toys, Ltd.)*, 2019 LEXIS 39023 (D.N.J. 2019). [↑](#footnote-ref-18)
19. *Ibid.* at \*1-2. [↑](#footnote-ref-19)
20. *Ibid.* at \*2-3. [↑](#footnote-ref-20)
21. *Ibid.* at \*5-6. [↑](#footnote-ref-21)
22. *Ibid.* at \*3-4. [↑](#footnote-ref-22)
23. *Ibid.* at \*18-19. [↑](#footnote-ref-23)
24. *Ibid* at \*16-17. [↑](#footnote-ref-24)
25. *Ibid.* [↑](#footnote-ref-25)
26. *Ibid.* [↑](#footnote-ref-26)
27. *Ibid.* [↑](#footnote-ref-27)
28. *Ibid.* [↑](#footnote-ref-28)
29. *Ibid* at \*18. [↑](#footnote-ref-29)
30. *Ibid* at \*18, fn. 10. [↑](#footnote-ref-30)
31. *In re Agrokor d.d.*, 591 B.R. 163 (Bankr. S.D.N.Y. 2018). [↑](#footnote-ref-31)
32. *Ibid.* at 196-97. [↑](#footnote-ref-32)
33. *In re Ir. Bank Resolution Corp. (In Special Liquidation)*,2014 Bankr. LEXIS 1990 (Bankr. D. Del. Apr. 30, 2014), at \*58. [↑](#footnote-ref-33)
34. *Id.* at 59, 67. [↑](#footnote-ref-34)
35. *In re Ashapura Minechem Ltd.*, 480 B.R. 129, 140, 144 (S.D.N.Y. 2012). [↑](#footnote-ref-35)
36. *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336-37 (S.D.N.Y. 2006). [↑](#footnote-ref-36)
37. 410 B.R. 357 (Bankr. E.D.N.Y. 2009). [↑](#footnote-ref-37)
38. *Ibid.* at 360. [↑](#footnote-ref-38)
39. *Ibid.* at 371. [↑](#footnote-ref-39)
40. *Ibid.* [↑](#footnote-ref-40)
41. *In re Toft*, 453 B.R. 186 (Bankr. S.D.N.Y. 2011). [↑](#footnote-ref-41)
42. *Ibid.* at 188. [↑](#footnote-ref-42)
43. *Ibid.*at 196. [↑](#footnote-ref-43)
44. *Ibid.* at 200-201. [↑](#footnote-ref-44)
45. 701 F.3d 1031, 1069 (5th Cir. 2012). The bankruptcy court held that particularly given the case law in the Fifth Circuit prohibiting third party releases (notwithstanding that other circuits had upheld them), “the protection of third party claims in a bankruptcy case is a fundamental policy of the United States.” *In re Vitro, S.A.B. de CV*, 473 B.R. 117 (Bankr. S.D. Tex. 2012). [↑](#footnote-ref-45)
46. 701 F.3d, at 1069. [↑](#footnote-ref-46)
47. *Ibid.* [↑](#footnote-ref-47)
48. *Id.* at 1067. [↑](#footnote-ref-48)
49. *Jaffe v. Samsung Electronics Co., Ltd.,* 737 F.3d 14, 18 (4th Cir. 2013). This followed a district court order directing the bankruptcy court to consider the issue after it had previously approved the recognition. *In re Qimonda,* 433 B.R. 547, 570-71 (E.D. Va. 2010). [↑](#footnote-ref-49)
50. *Ibid.* at 567. [↑](#footnote-ref-50)
51. *Jaffe*, 737 F.3d at 14. [↑](#footnote-ref-51)
52. *Ibid.* at 31-32. [↑](#footnote-ref-52)
53. *Agrokor* at 337-38. [↑](#footnote-ref-53)
54. *Ibid.* at 337. [↑](#footnote-ref-54)
55. *Ibid.* at 339. [↑](#footnote-ref-55)
56. Kirkland Alert, *Agrokor’s Landmark Dual Recognition Proceedings in the U.K. and U.S.; Bankruptcy Court Finds Gibbs Rule Does Not Prevent Recognition and Enforcement under Chapter 15*, Nov. 5, 2018. [↑](#footnote-ref-56)
57. *Agrokor* at 337. [↑](#footnote-ref-57)
58. *Agrokor* at 370. [↑](#footnote-ref-58)
59. *Ibid.* at 371 (The court explicitly noted that the legislative history of the CBIR stated that “the [Guide] will be a useful tool in interpreting the text” given that the Model Law is intended to be “interpreted purposively.”). [↑](#footnote-ref-59)
60. *Ibid.* [↑](#footnote-ref-60)
61. *Ibid.* [↑](#footnote-ref-61)
62. *Ibid.* at 373. [↑](#footnote-ref-62)
63. *Ibid.* at 374-75. [↑](#footnote-ref-63)
64. *Ibid.* at 374. [↑](#footnote-ref-64)
65. *Ibid.* at 375. [↑](#footnote-ref-65)
66. *Ibid.* [↑](#footnote-ref-66)
67. *Ibid.* at 375-76. [↑](#footnote-ref-67)
68. *Ibid.* at 376. [↑](#footnote-ref-68)
69. *Ibid.* at 377. [↑](#footnote-ref-69)
70. *Ibid.* at 376-77. [↑](#footnote-ref-70)
71. *Ibid.* at 376. [↑](#footnote-ref-71)
72. *Ibid.* at 377. [↑](#footnote-ref-72)
73. Declan Bush, “New Agrokor to be renamed as UK Scheme Approved,” Global Restructuring Review, 28 February 2019. [↑](#footnote-ref-73)