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Potential limitations on recognition under Chapter 15 proceedings: the hidden good faith test?

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Summary

IN SUMMARY

This article explores the scope of relief available under Chapter 15 and potential limitations on such relief.

DISCUSSION POINTS

- Background on Chapter 15
- Requirement for Chapter 15 recognition
- Mandatory recognition of foreign main and foreign non-main proceedings
- Chapter 15 discretionary relief
- Exceptions to Chapter 15 recognition

REFERENCED IN THIS ARTICLE

- Chapter 15
- Bankruptcy Code
- UNCITRAL

INTRODUCTION

Chapter 15 of Title 11 of the United States Code (the Bankruptcy Code) incorporates UNCITRAL's Model Law on Cross-Border Insolvency, and permits the foreign representative of a debtor in foreign insolvency proceedings to obtain recognition of such proceedings from a US bankruptcy court as a foreign main proceeding or foreign non-main, thereby triggering certain relief automatically, and permitting the bankruptcy court to grant further relief, binding upon creditors and assets of the debtor in the territorial jurisdiction of the United States. Chapter 15 proceedings are rooted in the principle of comity, or the deference that courts in one jurisdiction provide to the laws and legal proceedings of another. As such, a Chapter 15 proceeding is designed to be ancillary to a foreign insolvency proceeding, with the Chapter 15 court generally expected to defer to procedural and substantive rulings of the foreign tribunal. Comity can lead Chapter 15 courts to grant relief that would not otherwise be available in plenary insolvency proceedings under US law, but how far can a Chapter 15 court go in this regard? This article analyses exceptions to the principle that a Chapter 15 court extend comity and explores whether the judicial interpretations of the legal standards around these exceptions create an implicit good faith requirement.

CHAPTER 15 OVERVIEW – A COURT OF COMITY

Chapter 15 of the Bankruptcy Code was enacted in 2005 to 'incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency'.[1] By adopting the Model Law, Congress endorsed a 'pro-comity approach'[2] to cross-border insolvency law, grounded in the policy of modified universalism – the view that if a debtor commences a restructuring proceeding in its home country, courts in other jurisdictions should defer to that proceeding and only conduct ancillary proceedings

to assist, with only limited exceptions in compelling circumstances.[3] 'Cooperation' between US and non-US courts is one of the explicit goals of Chapter 15.[4]

Under the Chapter 15 framework, a foreign debtor in some ways 'exports' the restructuring laws of its home country to the United States for the purpose of enforcing orders against assets or persons within the territorial jurisdiction of the United States. Chapter 15 proceedings are intentionally designed to supplement, and be ancillary to, the foreign proceeding in a debtor's home country.[5] In this adjunct role,[6] the principles of comity are paramount[7] and, in typical circumstances, extending comity is mandated. Consistent with this mandate, Chapter 15 courts have consistently and reliably granted deference to foreign proceedings.

STATUTORY FRAMEWORK

Chapter 15 distinguishes between mandatory and discretionary relief. Section 1517 of the Bankruptcy Code mandates that a bankruptcy court grant recognition of any foreign main proceeding or foreign non-main proceeding so long as a foreign representative has properly instituted the Chapter 15 proceeding and has satisfied certain procedural requirements set forth in section 1515.[8] Unlike Chapter 11, Chapter 15 does not provide a court with flexibility to dismiss a proceeding for 'cause'.[9] Courts have interpreted the lack of a dismissal-for-cause provision to mean that bad faith, in and of itself, is not a sufficient basis to deny recognition.[10] As such, the only exception to section 1517's mandatory recognition requirement is the public policy exemption. As described in more detail below, the public policy exemption allows a bankruptcy court to deny recognition, assuming 1517's other requirements are satisfied, if the recognition would be manifestly contrary to the policies of the United States.[11]

Following recognition, sections 1521 and 1522 of the Bankruptcy Code permit a bankruptcy court to grant certain other discretionary relief to effectuate the purpose of Chapter 15 – such as, for example, taking evidence of a debtor's assets, affairs and liabilities – where the interests of the debtor, its creditors and other interested parties are sufficiently protected.[12] In evaluating whether to grant discretionary relief under section 1521 and 1522, courts will 'tailor the relief and conditions so as to balance the relief granted the foreign representative and the interests of those affected by such relief'.[13] Courts have applied section 1521 broadly, including to permit relief that would not be available in a Chapter 11 proceeding. For example, in ***In re Odebrecht Engenharia e Construção SA***,[14] a bankruptcy court relied on sections 1521 and 1522 to recognise potential nonconsensual third-party releases under a Brazilian restructuring plan, notwithstanding the US Supreme Court's recent ruling in ***Harrington v Purdue Pharma***, 603 U.S. 204 (2024), barring nonconsensual third-party releases in Chapter 11 proceedings.

Section 1507 of the Bankruptcy Code provides another avenue for a bankruptcy court to grant discretionary relief upon recognition. Under section 1507, a bankruptcy court may provide 'additional assistance' to a foreign representative to, in accordance with the principles of comity, ensure the just treatment of all claimants, the protection of claimholders in the United States, the prevention of preferential or fraudulent transfers and the distribution of the debtor's property in accordance with the Bankruptcy Code.[15] Section 1507 arguably overlaps with section 1521, but, as some courts see it, section 1507 allows courts to grant 'more extraordinary' relief than that available under section 1521.[16]

Taken together, while section 1517 generally requires recognition where the statutory factors are met, once a foreign proceeding has been recognised, section 1521 (as limited by section 1522) and section 1507 provide bankruptcy courts with broad discretion to fashion relief for parties in interest. Courts have frequently granted broad discretionary relief. In at least some instances, however, courts have taken the opportunity to deny relief where the good faith motives of a movant are in question. For example, in ***In re Golden Sphinx Ltd***, a bankruptcy court denied a creditor's request to seek discovery from a foreign debtor under section 1521 where the evidence demonstrated that the creditor was looking to engage in a 'fishing expedition' without a legitimate purpose for seeking discovery.[17] Given the wide latitude afforded to courts under sections 1521 and 1507, the balance of this article will focus on limitations to recognition of foreign proceedings under the mandatory provisions of section 1517.

EXCEPTIONS TO COMITY IN RECOGNITION OF FOREIGN PROCEEDINGS

COMI Manipulation

Under section 1517 of the Bankruptcy Code, recognition is mandatory where a debtor is seeking recognition of a foreign main proceeding or foreign non-main proceeding (and where other procedural requirements are satisfied). That said, a foreign representative still bears the burden of adequately pleading that the debtor is subject to a foreign main or non-main proceeding. In meeting the burden for a foreign main proceeding, a foreign representative must demonstrate that the foreign proceeding is pending in a country where the debtor has its centre of main interest, or COMI. Section 1516 of the Bankruptcy Code provides a rebuttable presumption that a debtor's COMI is the location of its registered office.[18] However, courts have resisted recognising COMI based on mere formalities[19] and have been particularly dubious about debtors that have changed or attempted to establish a new COMI on the eve of insolvency. Indeed, a majority of courts apply an anti-manipulation test when evaluating COMI – these courts hold that the Chapter 15 petition date is the relevant date at which to make the COMI inquiry, except that, 'to offset a debtor's ability to manipulate its COMI, a court may also look at the time period between the initiation of the [foreign proceeding] and the filing of a Chapter 15 petition'.[20] Where COMI has been manipulated, a court may deny recognition under section 1517.

Public Policy

Assuming COMI can be established in the relevant foreign jurisdiction, the Bankruptcy Code still provides a 'safety valve' to protect fundamental public policies of the United States and the Bankruptcy Code.[21] Section 1506 provides for the public policy exemption, providing that 'nothing in this chapter prevents the court from refusing to take an action governed by this chapter if it would be manifestly contrary to the public policy of the United States'.[22] Courts interpreting the public policy exemption have been clear that a foreign law need not mirror the United States' in order for a Chapter 15 court to grant recognition.[23] Rather, courts should focus on (1) whether the procedures used in the foreign proceeding are procedurally unfair and (2) whether granting the requested relief would seriously impact the value and significance of a US statutory or constitutional right, or otherwise hinder the bankruptcy court's ability to carry out the fundamental purpose of such statutory or constitutional right.-[24] Importantly, the public policy exemption was intended to be applied narrowly – to only those situations where relief would be manifestly contrary to the policy of the United States – and has been invoked sparingly by courts.[25]

Under this standard, bankruptcy courts have consistently granted recognition of foreign proceedings, even if the relief granted thereby would be impermissible in the United States. For example, in ***In re Ephedra Prods. Liability Litig***., a bankruptcy court granted recognition of a Canadian restructuring proceeding that provided for liquidation of product liability claims against the foreign debtor without a right to a jury trial.[26] Creditors opposing recognition asserted that the court should deny recognition on public policy grounds, arguing that it would deny the creditors their guaranteed Seventh Amendment right to a jury trial.[27] The court disagreed, finding that the lack of a right to a jury trial was not manifestly contrary to the policy of the United States. The court noted that '[o]bviously, the constitutional right to a jury trial is an important component of our legal system . . .. But the notion that a fair and impartial verdict cannot be rendered in the absence of a jury trial defies the experience of most of the civilized world'.[28]

Other cases have followed this trend,[29] including, more recently, ***Odebrecht*** and ***Crédito Real***,[30] where bankruptcy courts in New York and Delaware, respectively, granted recognition of foreign restructuring plans that approved potentially nonconsensual third-party releases. Under the ***Crédito Real*** court's analysis (which was adopted by the ***Odebrecht*** court), no constitutional or statutory rights were infringed by recognition of the foreign restructuring plan.[31]

Interests Of The Creditors And Debtors

A final lens through which courts have evaluated whether to grant relief in Chapter 15 is section 305 of the Bankruptcy Code. Section 305 provides that, upon notice and a hearing, a court may dismiss a Chapter 15 proceeding if it finds that the interests of the creditors and debtor would be better served by dismissal.[32] There are only a handful of decisions applying section 305 and those have echoed that good faith is not a requirement for recognition.[33] Courts have suggested, though, that section 305 may be available to courts post-recognition to fashion appropriate relief to address misconduct or bad faith.[34] While this remains a possibility for Chapter 15 courts, so far, it does not appear that any court has chosen to employ this option.

A LURKING GOOD FAITH REQUIREMENT?

Courts widely and explicitly recognise that there is no good faith requirement to granting recognition under Chapter 15. However, a close read of the case law suggests that, where there are elements of bad faith or misconduct, courts are more likely to find justification for denying recognition. ***In re Creative Financial, Ltd*** (***Creative Financial***) provides one example. In ***Creative Financial***, a bankruptcy court made specific findings that the debtor (through its controlling stakeholders) acted in bad faith by exploiting an insolvency proceeding in the British Virgin Islands and orchestrating a Chapter 15 proceeding with the objective of preventing the debtor's only non-insider creditor from collecting on a judgment against the debtor.[35] Specifically, the court found that the debtor's controlling shareholder caused the debtor to initiate an insolvency proceeding in the BVI shortly after the creditor obtained a judgment against the debtor in the UK. The debtor was organised in the BVI but otherwise had no operations or assets in the BVI. After the BVI proceeding was initiated, the debtor funded its hand-selected liquidator with a shoe-string budget that permitted the liquidator to perform only the minimum statutory duties required under law. The liquidator, in turn, performed only minimal functions and took no other actions to manage or liquidate the debtors. The controlling shareholder then directed the liquidator to file a Chapter 15 proceeding in an effort to extend the automatic stay to the debtor's US-based assets.

At the recognition hearing, the bankruptcy court found that the debtor and the liquidator acted in bad faith with a specific intent to hinder, delay and defraud the debtor's creditors. In keeping with the statutory mandates of Chapter 15, the court found that this alone was not a basis to deny recognition. However, the court found that the liquidator's illusory efforts in the BVI were so minimal that the debtor could not demonstrate that the BVI was the debtor's COMI.[36] Thus, the ***Creative Financial*** court denied recognition. ***Creative Financial*** is revealing in that, though the court did not deny recognition explicitly on bad faith grounds, it did so indirectly by finding that the foreign administrator's bad faith precipitated a poor process.

Courts also have, in extreme cases, used the public policy exemption to deny recognition where elements of bad faith existed. In ***In re Toft***, a bankruptcy court refused to recognise a German insolvency proceeding where the record showed that the foreign representative initiated the Chapter 15 proceeding for the sole purpose of gaining access to a German debtor's email accounts stored on US servers, which would have been illegal under US law and could potentially result in criminal liability for an actor carrying out the order. The bankruptcy court held that granting recognition would 'directly compromise the privacy rights . . . built on constitutional safeguards incorporated in the Fourth Amendment'.[37]

Similarly in ***In re Gold & Honey, Ltd***, a bankruptcy court refused to recognise an Israeli receivership proceeding that was commenced while the debtor was already subject to a Chapter 11 proceeding in the United States. There, a debtor filed for bankruptcy under Chapter 11, thereby staying all litigation against the debtor, including an Israeli receivership proceeding that had been instituted by one of the debtor's creditors. Notwithstanding the Chapter 11 stay, the creditor continued to prosecute the receivership, convinced the Israeli court to appoint receivers and ultimately sought recognition of the receivership under Chapter 15. The Chapter 15 court viewed the appointment of receivers as a clear violation of the automatic stay imposed by the debtor's Chapter 11 proceeding. The court denied recognition on the grounds that, '[r]ecognizing a foreign seizure of a debtor's assets postpetition would severely hinder United States bankruptcy courts' abilities to carry out two of the most fundamental policies and purposes of the automatic stay',[38] and would 'legitimize . . . violations of the automatic stay'.[39] In other words, the court found that extending comity to the Israeli receivership would undermine the value and importance of the automatic stay and sanction parties to contravene US policies under the jurisdiction of US courts.

Toft and ***Gold & Honey*** are a far cry from other public policy exemption cases like ***Ephedra***, ***Crédito Real*** and ***Odebrecht***. In the latter three cases, as well as the countless other examples where courts have recognised foreign proceedings over public policy objections, the parties were undertaking legitimate efforts to restructure in accordance with laws of the foreign jurisdiction and within the bounds of the Chapter 15 process. This includes cases where a debtor explicitly filed Chapter 15 as part of a litigation strategy to stay litigation.[40] Put simply, as a general matter, the parties in these cases were using the Chapter 15 process for its intended purpose: to aid in a legitimate restructuring process.

On the other hand, both ***Toft*** and ***Gold & Honey*** involved parties attempting to use Chapter 15 strategically to subvert otherwise applicable (domestic or foreign) law. Though it is generally accepted that a Chapter 15 court may grant relief that would not otherwise be permissible under US law, the petitioners in ***Toft*** and ***Gold & Honey*** appeared to be using Chapter 15 solely for the purpose of skirting otherwise applicable law, rather than incidentally, as a result of an otherwise procedurally fair foreign process. In this sense, ***Toft*** and ***Gold & Honey*** ring more

similar to ***Creative Financial***, which, though it applied different reasoning, ultimately came to the same result as ***Toft*** and ***Gold & Honey***. What seems to set these cases apart is whether a foreign representative sought not just to use Chapter 15 to gain some sort of strategic advantage, but whether such strategic advantage came at the cost of violating some other law, principle or procedural process. And even then, the ***Creative Financial***, ***Toft*** and ***Gold & Honey*** courts still did not focus their analysis on the bad faith of the actors but on the undermining of procedural safeguards.

When taking these cases together, a pattern seems to emerge – although Chapter 15 does not have an explicit good faith requirement, courts seem disinclined to let true misconduct go unchecked in a Chapter 15 forum. Debtors should be mindful that the lack of a good faith requirement does not mean that bad faith will be tolerated.

Endnotes

1 11 U.S.C. § 1501. ^ Back to section

2 U.N. COMM'N ON INT'L TRADE LAW, UNICITRAL LEGISLATIVE GUIDE ON INSOLVENCY LAW (2005). Comity is the recognition that one national allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or other persons who are under the protections of its laws. ***Hilton v Guyot***, 159 U.S. 163, 164 (1895). ^ Back to section

3 See Edward J. Janger, ***Universal Proceduralism***, 32 Brook. J. Int'l L. 819, 824 (2007); Leif M. Clark & Karen Goldstein, ***Sacred Cows: How to Care for Secured Creditors' Rights in Cross-Border Bankruptcies***, 46 Tex. Int'l L.J. 513, 524 (2001) ('In 2005, when the United States enacted the Model Law as Chapter 15 of the Bankruptcy Code, it continued its commitment to the ideals of modified universalism'); Jay Lawrence Westbrook, ***Chapter 15 at Last***, 79 Am. Bankr. L.J. 713, 716 (2005) (noting that it was the goal of Chapter 15 to replace 'territorialism' with 'modified universalism', a 'pragmatic approach that seeks to move steadily toward the ideal of universal proceedings, while accepting the reality of step-by-step progress through cooperation'). ^ Back to section

4 ***Supra*** at note 2. ^ Back to section

5 8 COLLIER ON BANKRUPTCY § 1501.01 ^ Back to section

6 See***id.*** See also***In re SNP Boat Serv. S.A.***, 483 B.R. 776, 789 (S.D. Fla. 2011) ('[t]o inquire into a specific foreign proceeding is not only inefficient and a waste of judicial resources, but more importantly, necessarily undermines the equitable and orderly distribution of a debtor's property by transforming a domestic court into a foreign appellate court where the creditors are always provided the proverbial "second bite" at the apple'.); ***In re Metcalfe & Mansfield Alt. Invs.***, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010) ('A U.S. bankruptcy court is not required to make an independent determination about the propriety of individual acts of a foreign court'). ^ Back to section

7 11 U.S.C. §§ 1501, 1507, 1508; see also ***In re Agrokor D.D.***, 591 B.R. 163, 186 (Bankr. S.D.N.Y. 2018). ^ Back to section

8 ***See*** 11 U.S.C. §§ 1517, 1515. Section 1517 requires recognition, upon notice and a hearing, where (1) a foreign proceeding is a foreign main proceeding or foreign non-main proceeding; (2) the foreign representative applying for recognition is a person or body; and (3) the petition for recognition meets the statutory requirements set forth in section 1515. Section 1515, in turn, sets forth procedural requirements for chapter 15 recognition, including that a petition for recognition be accompanied by some evidence of the existence of the foreign proceeding and a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. 11 U.S.C. § 1515. ^ Back to section

9 11 U.S.C. § 1102 (permitting a Chapter 11 court to dismiss a Chapter 11 petition for 'cause', which has been interpreted to include good faith). ^ Back to section

10 See, eg, ***In re Culligan***, Case No. 20-12192 (JPG), 2021 WL 278926, at *15 (Bankr. S.D.N.Y. July 2, 2021) (rejecting arguments that a Chapter 15 proceeding was not filed in good faith as required under section 1112(b) of the Bankruptcy Code and granting recognition despite evidence showing that the foreign representatives filed a Chapter 15 petition as part of a litigation strategy to end New York-based litigation); ***In re Manley Toys Ltd***., 580 B.R. 632, 648 (Bankr. D.N.J. 2018), ***aff'd*** 597 B.R. 578 (D.N.J. 2019). ^ Back to section

11 11 U.S.C. § 1506. ^ Back to section

12 11 U.S.C. §§ 1521, 1522; see also***In re Agrokor D.D.***, 591 B.R. 163, 186 (Bankr. S.D.N.Y. 2018) ('The court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief.'). ^ Back to section

13 ***In re Tri-Continental Exchange Ltd***., 349 B.R. 627, 637 (Bankr. E.D. Cal. 2006); ***In re Int'l Banking Corp., B.S.C.***, 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) ('The idea underlying [section 1522] is that there should be a balance between the relief that may be granted to the foreign representative and the interests of the person that may be affected by such relief.'). ^ Back to section

14 ***In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial***, Case No. 25-10482 (MG) (S.D.N.Y. Apr. 21, 2025), ECF No. 23; see also***In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.***, Case No. 25-10208 (TMH) (D. Del. Apr. 1, 2025), ECF No. 65 (holding that nonconsensual third-party releases ordered by a foreign court were enforceable under Chapter 15). ^ Back to section

15 11 U.S.C. § 1507. Section 1507(b) provides that, in determining whether to grant discretionary relief thereunder, a court should consider whether the requested relief will assure (1) the just treatment of all debtor claimholders; (2) the protection of claimholders in the United States and the inconvenience of a foreign proceeding; (3) the prevention of preferential or fraudulent disposition of debtor assets; (4) the distribution of debtor property substantially in accordance with the Bankruptcy Code; and (5) where appropriate, the provision of an opportunity for a fresh start for the individual that the foreign proceeding concerns. See 11 U.S.C. § 1507(b). ^ Back to section

16 *In re Vitro SAB De CV*, 701 F.3d 1031, 1056 (5th Cir. 2012). As the ***Vitro*** court conceived it, a court should first ask whether requested relief falls within the ambit of section 1521. ***Id.*** at 1056. If the requested relief is not contemplated in the enumerated provisions of section 1521, a court should then examine whether the relief would be appropriate as 'additional assistance' under 1507. ***Id.*** at 1056-57. ^ Back to section

17 *See In re Golden Sphinx Ltd*., Case No.: 2-22-bk-14320-NB, 2023 Bankr. LEXIS 976, at *5 (Bankr. C.D. Cal. Apr. 12, 2023). In another case, a bankruptcy court refused to extend a Chapter 15 stay of proceedings to a contract dispute pending between the debtor and its contract counterparty in the US district court. Here, the court found that the debtor failed to provide evidence at any point during the years-long Chapter 15 proceeding that the foreign proceeding include procedures to address the contract counterparty's claim. Moreover, the evidence showed the that the contract counterparty was not provided with notice of the foreign proceeding and was thus unable to assert its claim in the foreign proceeding. See ***In re Sivec SRL***, 476 B.R. 310 (Bankr. E.D. Oka. 2012). ^ Back to section

18 11 U.S.C. § 1516. ^ Back to section

19 *In re Bear Sterns High-Grade Structured Credit Strategies Master Fund, Ltd*., 375 B.R. 122, 129-30 (Bankr. S.D.N.Y. 2007). ^ Back to section

20 *In re Fairfield Sentry Ltd*., 714 F.3d 127, 130 (2d. Cir. 2012); see also***In re Ran***, 607 F.3d 1017, 1026 (5th Cir. 2010) (rejecting manipulation allegations where a debtor's COMI shifted over a decade prior to the Chapter 15 proceeding but noting '[a] similar case brought immediately after the party's arrival in the United States following a long period of domicile in the country where the bankruptcy is pending would likely lead to a different result'). ^ Back to section

21 See ***In re Treco***, 240 F.3d 148, 147 (2d Cir. 2001) ("The principle of comity has never meant categorical deference to foreign proceedings. It is implicit in the concept that deference should be withheld where appropriate to avoid the violation of laws, public policies, or rights of the citizens of the United States.'). ^ Back to section

22 ibid. ^ Back to section

23 *In re Vitro S.A.B. de CV*, 701 F.3d at 1053 ('Given Chapter 15's heavy emphasis on comity, it is not necessary, nor to be expected, that the relief requested by a foreign representative be identical to, or available under, United States law.'); ***In re Metcalfe & Mansfield Alternative Investments***, 421 B.R. at 697 ('The relief granted in the foreign proceeding and the relief available in a U.S. proceeding need not be identical.'); ***In re Compania de Alimentos Fargo, S.A***., 376 B.R. 427, 437 (Bankr. S.D.N.Y. 2007) (same). ^ Back to section

24 See ***In re Qimonda AG Bankr. Litig***., 433 B.R. 547, 568-69 (E.D. Va. 2010); ***In re Metcalf & Mansfield Alternative Invs***., 421 B.R. at 697. ^ Back to section

25 See ***In re ABC Learning Ctrs***., 728 F.3d 301, 305 (3d Cir. 2013) (finding that section 1506 should be narrowly constructed, interpreted restrictively and only invoked under 'exceptional circumstances concerning matters of fundamental importance' to the United States); ***In re Toft***, 453 B.R. 186, 193 (Bankr. S.D.N.Y. 2011) ('The public policy exception is clearly drafted in narrow terms, as the action must be "manifestly contrary" to the public policy of the United States'). ^ Back to section

26 ***In re Ephedra Prods. Liab. Litig***., 349 B.R. 333 (S.D.N.Y 2006). ^ Back to section

27 ibid. ^ Back to section

28 ibid. ^ Back to section

29 See,***e.g***., ***In re Fairfield Sentry Ltd***., 714 F.3d at 139 (finding that a BVI bankruptcy proceeding being conducted under seal was not manifestly contrary to the policy of the United States, holding that unfettered public access to court records is not so fundamental to the policy of the United States); ***CT Inv. Mgmt Co., LLC v Carbonell***, Case No. 10 CIV. 6872, 2012 U.S. Dist. LEXIS 3356, at *13 (S.D.N.Y. Jan. 6, 2012) (finding that the public policy exemption did not bar a court from recognising a stay in the foreign proceeding where such stay would not have been permitted under US law). ^ Back to section

30 ***In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial***, Case No. 25-10482 (MG) (S.D.N.Y. Apr. 21, 2025), ECF No. 23; ***In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.***, Case No. 25-10208 (TMH) (D. Del. Apr. 1, 2025), ECF No. 65. ^ Back to section

31 ***In re Crédito Real, S.A.B. de C.V., SOFOM, E.N.R.***, Case No. 25-10208 (TMH) (D. Del. Apr. 1, 2025), ECF No. 65, at 35; see also***In re Odebrecht Engenharia e Construção S.A. - Em Recuperação Judicial***, Case No. 25-10482 (MG) (S.D.N.Y. Apr. 21, 2025), ECF No. 23. ^ Back to section

32 11 U.S.C. § 305. ^ Back to section

33 See, eg, ***In re Manley Toys Ltd***., 580 B.R. at 651 (denying a creditor's request to suspend jurisdiction under section 305 following arguments that the liquidators acted in good faith by failing to expeditiously prosecute estate causes of action). ^ Back to section

34 See *In re Black Gold S.A.R.L*, 635 B.R. 517, 532 (9th Cir. B.A.P. 2022) ('[a]fter recognition, chapter 15 has other tools available to deal appropriately with misconduct and cases filed in faith. For example, a court can entertain abstention and dismissal under § 305') (internal citations omitted); *In re Millard*, 501 B.R. 644, 647 (Bankr. S.D.N.Y. 2013) (finding that a debtor's bad faith may be grounds for subsequent relief under section 305 of the Bankruptcy Code, but not a basis to deny recognition in the first instance). ^ Back to section

35 543 B.R. 498, 502 (Bankr. S.D.N.Y. 2016). ^ Back to section

36 id. at 520-21. ^ Back to section

37 See *In re Toft*, 453 B.R. 186, 198 (Bankr. S.D.N.Y. 2011). ^ Back to section

38 id. at 372. ^ Back to section

39 See *In re Gold & Honey, Ltd*., 410 B.R. 357, 360 (Bankr. S.D.N.Y 2009). ^ Back to section

40 *In re Culligan*, 2021 WL 278926, at *15 (Bankr. S.D.N.Y. July 2, 2021) (rejecting arguments that a chapter 15 proceeding was not filed in good faith as required under section 1112(b) of the bankruptcy code and granting recognition despite evidence showing that the foreign representatives filed a chapter 15 petition as part of a litigation strategy to end New York-based litigation). ^ Back to section

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