

## CROSS-BORDER PROCEEDINGS



## Chapter 15 News

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### Southern District of Florida declines to dismiss related entities from Petroforte Chapter 15 proceedings.

On March 27, 2014, the Court granted recognition of the main proceeding in Brazil with respect to Petroforte Brasileiro de Petroleo LTDA, which had once been Brazil's third largest gasoline and ethanol distributor. The recognition extended to both Petroforte and Related Entities, including Katia Rabello and Securinvest Holdings, S.A., counterparties to an ill-fated lease-back transaction, which the Brazilian Court "determined to be fraudulent and in large part responsible for the insolvency of Petroforte." In Brazil, the Trustee can pierce the corporate veil of third parties and bring their assets into the estate if it can demonstrate an intent to defraud creditors with respect to the third parties' transactions with the debtor. Rabello and Securinvest moved to dismiss the claims against them on the basis that extending the Petroforte case to them would be "manifestly contrary" to U.S. public policy, per 11 U.S.C. §1506. In its December 22, 2015 decision, the Court denied the motion to dismiss because although Rabello and Securinvest were brought into the case under "procedures different" from the Bankruptcy Code—namely, the Trustee's veil-piercing powers—such procedures were not contrary to U.S. public policy.

Through this decision, the Court helped clarify public policy considerations in extending a case to non-debtor entities.

### Delaware District Court clarifies criteria for bankruptcy court recognition of a foreign proceeding facilitated by a foreign government.

On December 18, 2013, the Delaware Bankruptcy Court granted recognition of the foreign main proceeding of The Irish Bank Resolution Corporation (IBRC), the successor entity to the Anglo Irish Bank Corporation, which was nationalized following the 2008 global financial crisis. On January 29, 2014, some of IBRC's U.S. creditors appealed the recognition of the foreign main proceeding; in its August 4, 2015 decision, the Court rejected the Creditors' three lines of reasoning. First, the Creditors contended that IBRC was ineligible for Chapter 15 because it excludes foreign banks with a branch or agency in the U.S. However, the Court found no evidence that IBRC had a U.S. branch or agency at the time of filing – and specified that the filing date was the relevant assessment period. Second, the Court found that, despite the Creditors' contention, IBRC's Irish proceeding was a "foreign main proceeding." Finally, the Creditors argued that recognizing the Irish proceeding would be contrary to U.S. public policy because such proceeding incorporates provisions that discriminate against U.S. creditors for the benefit of the Irish government. However, the Court agreed with IBRC that the contested provisions in fact "parallel provisions in laws adopted by the United States in response to the global financial crisis."

Through this decision, the District Court helped clarify the considerations for Chapter 15 recognition of a government-facilitated foreign proceeding.

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### **SDNY Bankruptcy Court holds that §363 sale of U.S.-based assets during main proceeding must be approved by U.S. Court.**

Fairfield Sentry Limited, a British Virgin Island-based investment fund heavily exposed to Bernard L. Madoff Investment Securities, was placed into liquidation in July 2009 in the BVI. In June 2010, Fairfield’s Chapter 15 petition seeking recognition of the BVI proceeding as the main foreign proceeding was granted. In December 2010, Fairfield sold its core asset—a Securities Investor Protection Act (SIPA) claim—through an auction process in the BVI to Farnum Place, LLC. Shortly after the sale, an unrelated third-party settlement significantly increased the value of the SIPA claim. Consequently—and despite the BVI court approving the sale—Fairfield’s foreign representative sought to have the U.S. Bankruptcy Court disapprove the sale per §363(b) and §1520(a)(2) of the Bankruptcy Code. The Court held that Fairfield’s foreign representative “demonstrated a sound business reason for seeking disapproval”—namely, the material increase in the claim’s value due to an exogenous event—and thus disapproved the sale of Fairfield’s SIPA claim.

**This decision, along with expressing a broad interpretation of standing requirements, also helps solidify the primacy of U.S. Bankruptcy Court review of bankruptcy sales conducted during a main foreign proceeding.**