IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 15
THE IRISH BANK RESOLUTION CORPORATION LIMITED (IN SPECIAL LIQUIDATION)	Case No. 13-12159 (CSS)
	RE: Docket No. 187
Debtor in a foreign proceeding.	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Introduction[1]

1. Before the Court is the Foreign Representatives' petition seeking recognition under Chapter 15 of Title 11 of the U.S. Code of an insolvency-related legal proceeding in Ireland.

2. On August 26, 2013, the Foreign Representatives filed a petition seeking recognition as a "foreign main proceeding," pursuant to sections 1515 and 1517 of the Bankruptcy Code, of the liquidation proceeding of IRBC that was commenced in Ireland pursuant to the IBRC Act. This Court's recognition of the Irish Proceeding as a foreign main proceeding would entitle the Debtor to certain protections of the Bankruptcy Code, including, but not limited to, the automatic stay provided for by section 362.

3. Two parties object to recognition. The objectors assert that the Irish Proceeding is not a "foreign proceeding" recognizable under Chapter 15 because the Debtor does not meet the threshold factors set forth in section 101(23). They principally

[1] Capitalized terms not defined herein have the meaning ascribed to them below.

argue that the Irish Proceeding should not be recognized because it is not a "proceeding," is not collective in nature, and is not supervised by a foreign court. In addition, they argue that, pursuant to section 1506, the Court should not recognize the Irish Proceeding as violative of U.S. public policy.

4. On November 6, 2013, the Court conducted a hearing (the "Hearing") and received evidence from all of the parties. At the conclusion of the Hearing, the Court took the matter of recognition under advisement.[2] On December 18, 2013, in compliance with § 1517(c) of the Code, which requires that the Court decide whether to grant recognition "at the earliest possible time," the Court entered its Order Granting Recognition of Foreign Main Proceeding and Related Relief (the "Recognition Order") for the reasons set forth on the record at a hearing on that date.[3] The Court noted in the Recognition Order that it would issue an order and/or opinion more fully setting forth the bases of its decision. This is the Court's further ruling.

II. Procedural History

5. Before the Court is the Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding (the "Chapter 15 Petition" or the "Recognition Petition" and "Proposed Order") submitted by Kieran Wallace and Eamonn Richardson (collectively, the "Foreign Representatives" or "Special Liquidators," and each a "Foreign Representative" or "Special Liquidator") as the foreign representatives of Irish

[2] November 6, 2013 Hr'g Tr. ("Hr'g Tr.") 162:20-163:2.

[3] D.I. 187.

Bank Resolution Corporation Limited ("IBRC" or the "Debtor").[4] Through the Chapter 15 Petition, the Foreign Representatives seek recognition of IRBC's pending proceeding in Ireland (the "Irish Proceeding") as a foreign main proceeding. There were originally four objections[5] to recognition ("Recognition"): (a) the Preliminary Objection to Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding, by Burlington Alpha LLC and Burlington Beta LLC[6] (the "Burlington Objection"); (b) the Response and Limited Objection of MPA Granada Highlands LLC and TBCI, LLC as Trustee to Verified Petition Under Chapter 15 for Recognition of a Foreign Proceeding[7] (the "MPA Granada and TBCI Objection"); (c) the Opposition to the Verified Petition Under Chapter 15 for Recognition of a Foreign Proceeding, by John Flynn Sr., *et al.*[8] (such objecting parties, the "Flynn Objectors," and such opposition, the "Flynn Objection"); and (d) the Objection by Castleway Properties, LLC and Walnut-Rittenhouse Associates, L.P. to the Verified Petition for Recognition Under Chapter 15 and Proposed Order[9] (such objecting parties, the "Castleway Walnut Objectors," and such objection, the "Castleway Walnut Objection").

6. The Court held a status conference with respect to Recognition on September 20, 2013 as well as a hearing to consider the Motion for Protective Order

---

[4] D.I. 3. Affidavits of Service were filed with the Bankruptcy Court. D.I. 17, 18, and 20.

[5] *See* Second Amended Notice of Agenda of Matters Scheduled for Hearing on November 6, 2013 at 10:00 A.M. (Eastern). D.I. 135.

[6] D.I. 41.

[7] D.I. 52.

[8] D.I. 34.

[9] D.I. 51.

Pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure and Rule 26(c) of the Federal Rules of Civil Procedure[10] with respect to certain discovery served in conjunction with the Burlington Objection. Shortly after that September 20, 2013 hearing, the Burlington Objection was withdrawn.[11] The remaining parties engaged in further discovery pending the scheduling of a hearing to consider Recognition.[12] At a telephonic hearing conducted on October 25, 2013, the Court was advised that the MPA Granada and TBCI Objection had been resolved. The Court then scheduled the hearing for consideration of Recognition for November 6, 2013.[13]

7. The Flynn Objectors and the Castleway Walnut Objectors claim that the Foreign Representatives have not met their burden of proof that the Irish Proceeding constitutes a foreign main proceeding under chapter 15 of the Bankruptcy Code and applicable law or, alternatively, urge the Court to refuse to recognize the Irish Proceeding, pursuant to the public policy exception set forth in 11 U.S.C. § 1506.

III. The Record

8. In support of Recognition of the Chapter 15 Petition, the Foreign Representatives filed the Declaration of Kieran Wallace in Support of Verified Petition

---

[10] D.I. 66.

[11] Notice of Withdrawal (Without Prejudice) of Preliminary Objection to Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding. D.I. 105.

[12] Notice of Deposition of Kieran Wallace (D.I. 106); Notice of Deposition of Mark Traynor (D.I. 107); Notice of Service of Discovery to Castleway Properties, LLC and Walnut-Rittenhouse Associates, L.P. (D.I. 113); Notice of Service of Discovery to MPA Granada Highlands LLC and TBCI, LLC (D.I. 114); Notice of Service of Discovery to John Flynn Sr., *et al.* (D.I. 115); Notice of Service of Discovery (D.I. 116); Notice of Service of Discovery (D.I. 120); Notice of Service of Discovery (D.I. 121); and Certification of Counsel Regarding Plaintiffs' Request the Court Compel Foreign Representatives to Comply with Plaintiffs' Amended Discovery Requests (D.I. 125).

[13] October 25, 2013 Hr'g Tr. 27:24–28:8.

Under Chapter 15 for Recognition of a Foreign Main Proceeding[14] (the "Wallace Declaration"), the Supplemental Declaration of Kieran Wallace in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding[15] (the "Supplemental Wallace Declaration"), the Declaration of Mark Traynor in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding[16] (the "Traynor Declaration"), the Supplemental Declaration of Mark Traynor in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding[17] (the "Supplemental Traynor Declaration" and, collectively with the Wallace Declaration, the Supplemental Wallace Declaration, and the Traynor Declaration, the "Foreign Representatives' Declarations"), the Foreign Representatives' Request for Judicial Notice in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Proceeding[18] (the "Request for Judicial Notice"), the Supplemental List of Parties to Litigation in the United States,[19] and the Memorandum of Law in Support of Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding.[20] By

[14] D.I. 4.

[15] D.I. 119.

[16] D.I. 5.

[17] D.I. 118.

[18] D.I. 117. The Foreign Representatives requested that the Court take judicial notice of a series of United States statutes that were allegedly enacted by Congress for purposes similar to those underlying the IBRC Act, for the purpose of highlighting comparable provisions of U.S. law. Request for Judicial Notice, Exhibits 1-4. It is generally understood that that these statutes, such as the Housing and Economic Recovery Act of 2008 ("HERA") and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Orderly Liquidation Authority" or "OLA") were enacted by Congress in response to the same global financial crisis that ultimately resulted in the passage of the IBRC Act.

[19] D.I. 49.

[20] D.I. 6.

agreement of the parties, the Foreign Representatives' Declarations were received into evidence as the direct testimony of the Foreign Representatives' witnesses.

9. In support of the two remaining objections, the Flynn Objectors and the Castleway Walnut Objectors (collectively, the "Objectors") filed the Declaration of Jarlath Ryan in Support of the Motion in Opposition to the Petition Under Chapter 15 for the Recognition of a Foreign Proceeding[21] (the "Ryan Declaration"), the Supplemental Declaration of Jarlath Ryan in Opposition to the Verified Petition Under Chapter 15 for Recognition of a Foreign Proceeding, by John Flynn Sr., *et al.*[22] (the "Supplemental Ryan Declaration"), the Declaration of Michael Forde in Opposition to Petition Under Chapter 15 for Recognition of a Foreign Proceeding, by Castleway Properties, LLC[23] (the "Forde Declaration"), the Supplemental Declaration of Michael Forde in Opposition to Petition Under Chapter 15 for Recognition of a Foreign Proceeding, by Castleway Properties, LLC[24] (the "Supplemental Forde Declaration"), and the Declaration of Anthony Reynolds in Opposition to Verified Petition Under Chapter 15 for Recognition of a Foreign Proceeding, by Castleway Properties, LLC[25] (the "Reynolds Declaration" and, collectively with the Ryan Declaration, the Supplemental Ryan Declaration, the Forde Declaration, and the Supplemental Forde

[21] D.I. 35.

[22] D.I. 134.

[23] D.I. 51 and 52.

[24] D.I. 129.

[25] D.I. 131.

Declaration, the "Objectors' Declarations"). Additional direct testimony by Jarlath Ryan was also offered by way of proffer.

10. By agreement of the parties, the Objectors' Declarations (including the additional proffer on behalf of Mr. Ryan) were admitted into evidence as the direct testimony of the Objectors' witnesses, except for certain objections discussed below.[26] Specifically, the Foreign Representatives moved to strike those portions of Mr. Ryan's testimony and declarations that went to ultimate issues of United States law, as Mr. Ryan disclaimed any expertise regarding United States law during his cross examination.[27] At the Hearing, the Court granted the motion to strike, although the Court permitted those portions of Mr. Ryan's testimony and declarations to be considered by the Court as argument (as opposed to evidence) on the ultimate issues of Recognition.[28]

11. The Foreign Representatives also moved into evidence a series of exhibits (each identified herein as "FR Exhibit __") presented in binder form and labeled FR Exhibits 1 through 28.[29] The Court admitted those FR Exhibits as to which there was no objection.[30] The Objectors raised objections to two newspaper articles identified as FR

---

[26] Hr'g Tr. 6:11-13, 7:1-6, 38:13-15, 38:16-18.

[27] Hr'g Tr. 57:22-58:2.

[28] Hr'g Tr. 58:14–20.

[29] Hr'g Tr. 76:6–8, 23.

[30] Hr'g Tr. 80:11–25. There is a typographical error in the Hearing transcript where the transcript should read Exhibit 1 but instead reads Exhibit 21. *Compare* Hr'g Tr. 79:6-12 *with* Hr'g Tr. 80:13 and 80:22. The Court hereby orders the Hearing transcript corrected to reflect the admission into evidence of FR Exhibits 1 to 20 in addition to those FR Exhibits including and following FR Exhibit 21. For the avoidance of doubt, FR Exhibits 26 and 28 remain excluded.

Exhibits 26 and 28 on relevance grounds, and the Court excluded those FR Exhibits.[31] The Foreign Representatives also introduced FR Exhibit 29, evidencing the recording of a deed of charge in favor of the Central Bank of Ireland, which was admitted without objection.[32] Finally, the Foreign Representatives offered rebuttal testimony by Mark Traynor whereby the Foreign Representatives also sought to introduce two additional exhibits: (a) Section 135 of the Companies Act of 1990 as FR Exhibit 30, and (b) information from the National Asset Management Authority of Ireland's website as FR Exhibit 31.[33] The Court admitted FR Exhibit 30 without objection and admitted FR Exhibit 31 over the objection of one of the Objectors on "best evidence" grounds.[34]

12. The Castleway Walnut Objectors submitted the Castleway Walnut Objection, and then offered additional rebuttal testimony by Anthony Reynolds.[35] The Castleway Walnut Objectors also offered a series of exhibits (each identified herein as "CW Exhibit __") to the Reynolds Declaration, which were admitted without objection.[36] There was no cross examination of Mr. Reynolds.[37] Finally, the Castleway Walnut Objectors offered a series of Irish statutes, including the Credit Institutions (Stabilisation) Act 2010 (the "Credit Stabilisation Act") and the Credit Bank and Credit Institutions (Resolution) Act 2011, which were admitted as CW Exhibit 7 and CW

---

[31] Hr'g Tr. 80:18.

[32] Hr'g Tr. 61:1-10, 80:22-25.

[33] Hr'g Tr. 76:17-18, 83:2-15, 83:19-20, 85:16-86:20.

[34] Hr'g Tr. 83:2-15, 86:22-88:2.

[35] Hr'g Tr. 95:2-5, 95:10-96:19.

[36] Hr'g Tr. 102:7-103:6.

[37] Hr'g Tr. 96:17.

Exhibit 8, respectively, without objection, and the February 2012 National Asset Management Agency Management of Loans Comptroller and Auditor General Special Report, which was admitted as CW Exhibit 6 over objection by the Foreign Representatives.[38]

13. The Flynn Objectors then offered a series of exhibits (each identified herein as "Flynn Exhibit __").[39] The Foreign Representatives raised objections to Flynn Exhibits 10 and 13, both of which were withdrawn.[40] The Foreign Representatives also raised hearsay objections to newspaper articles which were offered as Flynn Exhibits 16, 17 and 21, and the Court excluded those Flynn Exhibits.[41] The Foreign Representatives objected to the admission of Flynn Exhibit 24 to the extent that it was being offered as anything other than a demonstrative exhibit, and the Court received it as a demonstrative exhibit only.[42] The Flynn Objectors also offered the deposition transcripts of Kieran Wallace and Mark Traynor, taken on November 4, 2013, as Flynn Exhibits 28 and 29 (the "Wallace Transcript" and the "Traynor Transcript," respectively).[43] By agreement of the parties, the Court received those transcripts as the cross-examination of those witnesses, subject to the objections that were made on the

[38] Hr'g Tr. 102:7-103:6, 103:7-104:24.

[39] Hr'g Tr. 97:3-9.

[40] Hr'g Tr. 98:10-14, 98:15-99:7.

[41] Hr'g Tr. 99:8-12, 100:10-11.

[42] Hr'g Tr. 99:13-100:4.

[43] Hr'g Tr. 100:12-13.

record of the depositions.[44] Finally, the Flynn Objectors offered the Statement of Affairs as Flynn Exhibit 27 and the National Asset Management Agency Act of 2009 as Flynn Exhibit 30, both of which were admitted without objection.[45] Thereupon, the record was closed.[46]

14. At the conclusion of the hearing, the Court requested that the parties file proposed findings of fact and conclusions of law.[47]

15. Thereafter, the Court entered the Recognition Order, which granted recognition of the Irish Proceeding as a foreign main proceeding, pursuant to sections 101(23) and 1517 of the Bankruptcy Code.[48] The Recognition Order provided for the subsequent entry of an order and/or opinion that sets forth in detail the factual and legal reasons for the Court's ruling. This is the Court's further ruling.

IV. Facts

16. Based upon the Record, the Court makes the following findings of fact pursuant Rule 7052 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"):

A. Background

17. During the global financial crisis of 2008, property prices in Ireland began to decline steeply and both the Irish financial market and the broader global financial

---

[44] Hr'g Tr. 101:9-102:5.

[45] Hr'g Tr. 107:1-4.

[46] Hr'g Tr. 105:4-10.

[47] *See* D.I. 141, 142 (which was later amended by D.I. 148).

[48] The Flynn Objectors filed a notice of appeal of the Recognition Order. D.I. 197. The Bankruptcy Court has transmitted the record on appeal to the United States District Court for the District of Delaware. D.I. 225. Furthermore, the District Court has docketed the appeal as Civil Action Number 14-108. D.I. 237.

markets suffered a severe liquidity crisis.[49] Anglo Irish Bank Corporation Limited ("Anglo") and Irish Nationwide Building Society ("INBS") both experienced significant deteriorations in their financial positions as a result of these events.[50] In fact, the collapse of Anglo's share price was so significant that by the end of September 2008 its very survival was in jeopardy.[51]

18. Fearing that the failure of Anglo would lead to a general run on Irish banks, the Irish government took immediate steps in response.[52] Over the course of the following year, the Irish government implemented various approaches, including the issuance of a blanket guarantee for the liabilities of both Anglo and INBS, the provision of funds to recapitalize Anglo and INBS, and the issuance of promissory notes to both Anglo and INBS against which the banks could obtain additional emergency financing from the Central Bank of Ireland, but none of these measures were successful in stabilizing the Irish financial market.[53] By January 2009, the Irish government determined that the only solution was to nationalize Anglo, which was accomplished by statute.[54] The nationalization of INBS followed suit in 2010.[55]

19. As such, Anglo was re-registered as a private limited company and renamed as Anglo Irish Bank Corporation Limited. Refinancing of Anglo was provided

---

[49] Wallace Declaration, ¶ 19.

[50] *Id.* at ¶ 20.

[51] *Id.*

[52] *Id.*

[53] *Id.* at ¶¶ 21, 25.

[54] *Id.* at ¶ 22.

[55] *Id.* at ¶ 22.

by promissory notes totaling €30.1 billion that were issued by the Irish government to Anglo. The promissory notes were used as collateral by Anglo to borrow funds from the Irish Central Bank.

20. In 2010, the Irish government passed the Credit Stabilisation Act and, on July 1, 2011, IBRC, a state-owned banking entity, was created.[56] IBRC was specifically created as a successor to Anglo and INBS, and Anglo and INBS were both merged into IBRC.[57] Under the Credit Stabilisation Act, IBRC was no longer permitted to make loans to new customers.[58]

21. It subsequently became clear that the exposure of the Irish government to the liabilities of IBRC were far greater than anyone had anticipated. Moreover, as the severe effects of the 2008 global financial crisis continued within the Irish economy, the Irish government determined that it was necessary to wind down IBRC in order to restore the financial position of the Irish State and to re-establish Ireland's access to the international debt markets.[59] It is well documented that Ireland is a late addition to the "PIIGGS" of the European Union, a group consisting of many countries which required bailouts following the 2008 global financial crisis.

22. Most of IBRC's loan assets in the United States have been sold; however, there are remaining United States loans that could not be sold because the applicable loan documentation had restrictions against transfers and IBRC was not able to obtain

---

[56] *Id.* at ¶¶ 5, 26.

[57] *Id.* at ¶¶ 5, 27.

[58] *Id.* at ¶ 8.

[59] Wallace Declaration, ¶ 28; Hr'g Tr. 133:21-24; IBRC Act, § 3.

consent for those transfers. The Castleway Walnut Objectors assert that this category includes the Castleway and Walnut Loans, which contain restrictions against transfers; however, IBRC contends that the Castleway and Walnut Loans were transferred, notwithstanding any such restrictions, to the National Asset Management Agency ("NAMA") on or about November 1, 2010.[60]

23. In the fall of 2012, the Irish Central Bank registered a charge (i.e. a security interest) over all of the assets of IBRC to secure the funds that the bank had provided to IBRC under the promissory note arrangement.

B. Commencement of the Irish Proceeding

24. On February 7, 2013, the Irish Parliament passed the Irish Bank Resolution Corporation Act of 2013, which was signed into law immediately thereafter.[61]

25. The IBRC Act changes a substantial portion of the Irish Companies Act of 1993 Part VI, which deals with the winding-up of companies in Ireland. For example, Section 10 of the IBRC Act changes the oversight of the IBRC liquidation by the Irish courts, involvement of creditors or other third parties in the liquidation and restricts judicial review of the liquidation itself, and of the actions taken by the liquidators. However, it leaves in place: (i) limited scope for an appeal by creditors to the Irish High Court (the "High Court") for some form of relief which is not injunctive in nature and

---

[60] NAMA was established by the National Asset Management Agency Act of 2009 as an initiative taken by the Irish Government to address the serious problems that arose in Ireland's banking sector. NAMA has acquired loans with a value of €74 billion from participating financial institutions, including Anglo Irish Bank/IBRC. NAMA's objective is to obtain the best achievable financial return for the Irish State on this portfolio over an expected lifetime of up to 10 years. NAMA operates under the direction of the Irish Minister for Finance.

[61] Wallace Declaration, ¶ 28; FR Exhibit 3 (the Irish Bank Resolution Corporation Act of 2013, hereafter referred to as the "IBRC Act") (as authenticated by the Wallace Declaration, fn. 2).

which is not contrary to the current of future directions of the Minister; (ii) the normal scope of asset distribution priorities to the extent that they are not overridden by the actions of the Special Liquidators or the Irish Minister of Finance (the "Minister"), pursuant to Section 12 of the IBRC Act; and (iii) the right of the Special Liquidators to challenge any pre-liquidation preference given to any person other than the Irish Central Bank.

26. The IBRC Act expressly lists the purposes of the legislation in section 3, which include the following:

(a) to help to address the continuing serious disturbance in the economy of the Irish State;

(b) to provide for the winding up of IBRC in an orderly and efficient manner in the public interest;

(c) to end the exposure of the Irish State and the Irish Central Bank to IBRC;

(d) to help to restore the financial position of the Irish State;

(e) To help to enable the Irish State to re-establish normalized access to the international debt markets;

(f) to assist, to the extent achievable, in recovering the financial assistance provided by the Irish State to IBRC as fully and efficiently as possible;

(g) to resolve the debt of IBRC to the Irish Central Bank;

(h) to protect the interests of Irish taxpayers;

(i) to restore confidence in the banking sector by furthering the reorganisation of the Irish banking system in the public interest;

(j) to underpin support measures implemented by the Irish government in relation to the banking sector.[62]

27. The "Purposes" are specifically referred to again in Section 8 of the IRBC Act, which limits the power of the Irish courts to grant injunctive relief under the IRBC Act to cases where "not granting injunctive relief would give rise to an injustice", and precludes granting injunctive relief in cases where "a remedy in damages would be available to the person who seeks that relief" and in considering any injunctive relief on an interim or interlocutory basis mandates that the court "have regard, in determining whether to grant such relief, to the public interest. . . . In considering the public interest, the Court [sic] shall have regard to the purposes of this Act."[63]

28. The IRBC Act also includes the following concepts:

(a) Section 4 provides that the Minister will make a special liquidation order in respect of IBRC.

(b) Section 5 provides, among other things, for the publication of the special liquidation order.

(c) Section 6 provides, among other matters, for an immediate stay on all proceedings against IBRC; that no further actions or proceedings can be issued against IBRC without the consent of the High Court; that no action or proceedings for the winding up of IBRC, or the appointment of a liquidator or an examiner can be taken, issued, continued or commenced; for the removal of any liquidator or examiner appointed prior to the order; and that the order constitutes notice of termination of employment for each employee with immediate effect.

(d) Section 7 provides for the appointment of the special liquidators, Section 8 limits the power to grant injunctive relief in certain situations, Section 9 provides that the Minister will issue

---

[62] IBRC Act, § 3.

[63] *Id.* at § 8.

instructions and may issue directions to the special liquidators, and requires the special liquidators to comply with such instructions and directions.

(e) Sections 10 and 11 deal with the application of certain sections of the Companies Acts and Central Bank and Credit Institutions (Resolution) Act 2011 in the context of the winding up.

(f) Section 12 provides for the sale or transfer of assets and liabilities in IBRC.

(g) Section 13 provides that the Minister may give directions in writing to NAMA in relation to the acquisition by NAMA of the debt of IBRC to the Irish Central Bank; and in relation to the purchase of assets of IBRC from the special liquidators.

(h) Section 14 provides that the Minister shall direct the special liquidators in respect of the independent valuation of the assets of IBRC prior to sale.

(i) Section 17 provides that the Minister may issue securities (Parliamentary Debate).[64]

29. On February 7, 2013, pursuant to the authority granted under section 4 of the IBRC Act, the Minister issued the Special Liquidation Order (the "Special Liquidation Order") appointing the Foreign Representatives as Special Liquidators for the Debtor as set forth in section 7(1) of the IBRC Act.[65] The issuance of the Special Liquidation Order commenced the Irish Proceeding, a liquidation proceeding with respect to the Debtor under Irish law.[66] As discussed in more detail below, the Foreign Representatives have presented sufficient evidence of the commencement of the Irish Proceeding and the appointment of the Foreign Representatives.

---

[64] Companies Act, § 231; IBRC Act.

[65] IBRC Act, §§ 4, 7(1); FR Exhibit 4 (as authenticated by the Wallace Declaration, ¶ 51); Wallace Declaration, ¶ 28; Wallace Transcript, 26:15-24; Traynor Declaration, ¶ 5-6; Traynor Transcript, 5:15-19.

[66] IBRC Act, § 4(2); Wallace Declaration, ¶ 28; Traynor Declaration, ¶ 6.

30. The Debtor is an Irish incorporated company.[67] IBRC is the owner of subsidiary entities, certain of which are incorporated in and therefore located in the United States, and IBRC also holds certain assets in the United States.[68] As of the date of the filing of the Chapter 15 Petition, the Debtor had no offices in the United States.[69] Historically, the Debtor maintained "representative offices" (within the meaning of U.S. federal banking laws and regulations, and as confirmed by the Federal Reserve Board) in the U.S., but the uncontroverted testimony in the record was that the last of such offices was closed as of September 30, 2012, more than ten months before the Chapter 15 Petition was filed.[70]

31. The Special Liquidators control all of the operations of the Debtor, subject to the supervision of the Minister and the High Court of Ireland (the "High Court") to the extent provided in the IBRC Act.[71] Pursuant to the IBRC Act, the powers of the

---

[67] Wallace Declaration, ¶ 43.

[68] Wallace Declaration, ¶¶ 10-11; FR Exhibit 2 (as authenticated by the Wallace Declaration, ¶ 10); FR Exhibit 6 (as authenticated by the Supplemental Wallace Declaration, ¶ 11).

[69] Wallace Declaration, ¶ 12; Supplemental Wallace Declaration, ¶ 12; FR Exhibit 12 (as authenticated by the Supplemental Wallace Declaration, ¶ 12).

[70] *See id.*

[71] IBRC Act, § 9; FR Exhibit 18 (the Companies Act of 1963, as amended by the IBRC Act (hereafter referred to as the "Companies Act")) (as authenticated by the Supplemental Traynor Declaration, ¶ 3), § 280; Wallace Declaration, ¶ 43; Wallace Transcript, 26:15-24, 34:14-35:11, 46:16-47:9, 47:20-24, 92:8-13; Traynor Declaration, ¶¶ 6, 12, 15-16, 18-19, 20-23, 28-32; Supplemental Traynor Declaration, ¶¶ 6-13; Traynor Transcript, 21:10-22, 25:24-26:25, 34:17-35:23. Section 9 of the IBRC Act, in turn, instructs and empowers the Minister to oversee directly the work of the Special Liquidators stating that:

> (1) The Minister shall, as soon as practicable following the appointment of a special liquidator, issue the special liquidator with instructions setting out the details in respect of the manner in which the winding up of IBRC is to proceed.
>
> (2) If the Minister is of the opinion that it is necessary for the achievement of any of the purposes of this Act to do so, he or she may give a direction to a special liquidator to take or to refrain from taking any action in connection with the winding up of IBRC.

Special Liquidators include the powers available to liquidators under section 231 of the Companies Act, which include powers to:

(a) bring or defend any action or other legal proceeding in the name and on behalf of IBRC;

(b) carry on the business of IBRC so far as may be necessary for the beneficial winding up thereof;

(c) appoint a solicitor to assist them in the performance of their duties;

(d) pay any classes of creditors in full;

(e) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against IBRC, or whereby IBRC may be rendered liable; and

(f) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between IBRC and a contributory or alleged contributory or other debtor or person apprehending liability to IBRC, and all questions in any way relating to or affecting the assets or winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.[72]

---

(3) A special liquidator shall comply with instructions issued or any direction given under this Act.

(4) No cause of action of any kind shall lie against a special liquidator in respect of anything done or not done in compliance with instructions issued or any direction given under this Act.

(5) The Minister may revoke or amend instructions issued under this Act, including instructions issued under this subsection.

IRBC Act, § 9.

[72] Companies Act, § 231; IBRC Act § 10(3)(e).

32. Consistent with their powers, the Special Liquidators have taken actions to preserve the books and records of the Debtor.[73]

33. The Special Liquidators are located in Dublin, Ireland.[74] There is no dispute that the Minister and the High Court are likewise located in Dublin, Ireland. All decision-making and control of the Irish Proceeding are undertaken in Dublin, Ireland.[75] All administrative tasks and related functions are conducted in Ireland, and the vast majority of personnel and staff who undertake such tasks and functions are located in Ireland.[76] The Debtor's registered office is located in Dublin, Ireland.[77] The Debtor's center of main interest is Dublin, Ireland.[78]

C. Commencement of the Instant Chapter 15

34. On August 26, 2013, the Foreign Representatives filed the Recognition Petition for recognition of Mr. Wallace and Mr. Richardson as "foreign representatives" of IBRC and for recognition of the Irish Proceeding as a "foreign main proceeding" under chapter 15 of the Bankruptcy Code. The Chapter 15 Petition was accompanied by a statement by the Foreign Representatives that no other foreign proceedings are pending with respect to the Debtor other than the Irish Proceeding.[79]

---

[73] *See* FR Exhibit 7 (as authenticated by the Supplemental Wallace Declaration, ¶ 5); Supplemental Wallace Declaration, ¶ 5.

[74] *See* Wallace Declaration, ¶¶ 1, 43, 58.

[75] *Id.* at ¶ 43.

[76] *See id.*

[77] *See id.*

[78] *See id.* at ¶ 44.

[79] *See* Wallace Declaration, ¶ 58.

D. Objections to Recognition

35. The Objectors object to Recognition on the following grounds:

(a) IBRC is not eligible to be a debtor under Chapter 15 because (i) IBRC is a foreign bank within the meaning of 11 U.S.C. § 1501(C)(L),[80] or (ii) in the alternative, IBRC is an "instrumentality" of government and should not be considered to be a "person" or "debtor."

(b) The Petition and supporting papers fail to provide proper justification for recognizing the Irish Proceeding as a foreign main proceeding:

(i) The Irish Proceeding does not meet the minimum standard to be considered a "foreign proceeding;"

(ii) The Irish Proceeding is not a "proceeding" within the meaning of Chapter 15;

(iii) The Irish Proceeding is not subject to regular judicial oversight;

(iv) The Irish Proceeding is not collective;

(v) The Irish Proceeding is not authorized or conducted under a law related to insolvent or the adjustments of debts; and

(vi) Under the Irish Proceeding, IBRC's assets and affairs are not subject to the control or supervision of a foreign court or other authority competent to control or supervise a "foreign proceeding."

(c) The Court should deny recognition of the Irish Proceeding as a "foreign proceeding" on grounds of public policy, pursuant to § 1506 of the Bankruptcy Code.

---

[80] The Castleway Walnut Objectors take no position on whether IBRC was or was not a "Foreign Bank" that would be prohibited from Chapter 15. However, the Castleway Walnut Objectors assert that recognition should be denied because IBRC, NAMA and the Minister are all "instrumentalities" of government and therefore should not be considered to be "persons" or "debtors" eligible for Chapter 15 status under 11 U.S.C. § 101(24), 109(b) and 1515.

V. Discussion And Conclusions

A. Jurisdiction

36. This Court has jurisdiction to consider the IBRC Chapter 15 Petition and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and sections 109 and 1501 of the Bankruptcy Code. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is proper in this district pursuant to 28 U.S.C. § 1410. This case was properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

B. Chapter 15

37. Chapter 15 was added to the Bankruptcy Code by the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*. It is the U.S. domestic adoption of The Model Law on Cross-Border Insolvency (the "Model Law"), that was promulgated by the United Nations Commission for International Trade Law (commonly referred to as "UNCITRAL"). As incorporated into the Bankruptcy Code, it replaces old section 304 of the Bankruptcy Code.

38. The purpose of Chapter 15 and the Model Law on which it is based, is to provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, and other parties of interest involving more than one country. This general purpose is realized through five objectives specified in the statute:

(1) to promote cooperation between the United States courts and parties of interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) to establish greater legal certainty for trade and investment;

(3) to provide for the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor;

(4) to afford protection and maximization of the value of the debtor's assets; and

(5) to facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment.[81]

39. The Model Law's Guide to Enactment, published by UNCITRAL, states:

> "To fall within the scope of the Model Law, a foreign insolvency proceeding needs to possess certain attributes. These include the following: basis in insolvency-related law of the originating State; involvement of creditors collectively; control or supervision of the assets and affairs of the debtor by a court or another official body; and reorganization or liquidation of the debtor as the purpose of the proceeding . . . ."[82]

40. In order for a foreign bankruptcy to be recognized and a petition for recognition to be granted under the Model Law and Chapter 15, the petition must meet several minimal requirements. However, Chapter 15 recognition is not a "rubber stamp exercise."[83] The Court can "consider any and all relevant facts."[84]

41. Section 1517 requires recognition of a foreign proceeding if:

(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign non-main proceeding within the meaning of section 1502;

---

[81] 11 U.S.C. § 1501.

[82] UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT¶ 23, at 10, U.N. Gen. Assembly, UNCITRAL 30th Sess., U.N. Doc. A/CN.9/442 (1997), available at http://www.uncitral.org/uncitral/en/commission/sessions/30th.html [hereinafter "Guide to Enactment"].

[83] *In re Basis Yield Alpha Fund (Master)*, 381 B.R. 37, 40 (Bankr. S.D.N.Y. 2008).

[84] *Id.* at 41.

(2) the foreign representative applying for recognition is a person or body; and

(3) the petition meets the requirements of section 1515.[85]

42. The ultimate burden of proof on each element is on the foreign representative.[86]

C. Foreign Bank/Government Instrumentality

43. As a threshold matter, the Flynn Objectors assert that IBRC is a "Foreign Bank" and the Castleway Walnut Objectors assert that the IBRC, among others, is an "instrumentality" of the government and therefore should not be considered a "person" or "debtor" eligible for Chapter 15 status.[87] Each objection will be taken in turn.

i. Foreign Bank

44. Section 1501(c)(1) of the Bankruptcy Code provides that chapter 15 does not apply to "a proceeding concerning an entity, other than a foreign insurance company, identified by exclusions in section 109(b)."[88] Section 109(b)(3)(B) identifies by exclusion a "foreign bank . . . that has a branch or (as defined in section 1(b) of the International Banking Act of 1978) in the United States."[89]

45. The plain language of the statute clearly indicates that the relevant time period to consider is the date of filing of the Chapter 15 petition, not the debtor's "entire

---

[85] 11U.S.C. § 1517. *See also In re Betcorp Ltd.*, 400 B.R. 266, 285 (Bankr. D. Nev. 2009).

[86] *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund*, Ltd., 389 B.R. 325, 335 (S.D.N.Y. 2008).

[87] The Castleway Walnut Objectors also assert that NAMA and the Minister are also government instrumentalities, however, neither NAMA nor the Minister of Finance are seeking recognition, as such, these issues are not before the Court and will not be addressed.

[88] 11 U.S.C. § 1501(c)(1).

[89] 11 U.S.C. §109(b)(3)(B).

operational history."[90] The Second Circuit has held that "[t]he present tense suggests that a court should examine [the relevant factual issue] at the time the Chapter 15 petition is filed," but also states that "[t]o offset a debtor's ability to manipulate its [center of main interests], a court may also look at the time period between initiation of the foreign liquidation proceeding and filing of the Chapter 15 petition."[91] Here, regardless of whether this Court chooses to examine the date of filing of the Chapter 15 Petition or the time period between the initiation of the Irish Proceeding and the date of filing of the Chapter 15 Petition, the result is the same: IBRC did not have a branch or agency in the United States, nor was IBRC engaged in any business in the United States, during any of the potential time periods at issue. No contrary factual evidence was introduced by any party through their pleadings or in the record. IBRC is not a "foreign bank" and is eligible to be a debtor under chapter 15 of the Bankruptcy Code.

ii. Government Instrumentality

46. Only a "person" may be a debtor in a chapter 15 case.[92] "The term 'person' ... does not include governmental unit. . . ."[93]

> The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state, department, agency, or instrumentality of the United States ..., a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic

---

[90] *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 133 (2d Cir. 2013).

[91] *Id.* at 134, 133.

[92] 11 U.S.C. §§101(24), 109(b) and 1515.

[93] 11 U.S.C. § 101(41).

government.[94]

47. In *In re Nortel Networks, Inc.*, the Third Circuit turned to legislative history to determine the meaning of "instrumentality," which is not defined in the Bankruptcy Code:

> The legislative history of § 101(27) instructs that 'department, agency, or instrumentality' does not include entities that owe their existence to state action such as the granting of a charter or a license but that have no other connection with a State or local government or the Federal Government. The relationship must be an active one in which the department, agency, or instrumentality is actually carrying out some governmental function.[95]

48. The Third Circuit held that an entity established by the United Kingdom government to guaranty certain obligations of failed private pension plans was not a "governmental unit." The U.K. entity was funded entirely by private employers and benefitted only nongovernmental employees. The only connection between the entity and the U.K. government was the fact that the government had established it. The court said that the requisite "active" relationship between the government and the entity was lacking because the entity "stands in the shoes of a private party [i.e., the insolvent private pension plan]."[96]

---

[94] 11 U.S.C. § 101(27).

[95] *In re Nortel Networks, Inc.*, 669 F.3d 128, 138 (3d Cir. 2011) (citations and internal quotations omitted) analyzing the term "governmental unit" in connection with the police powers exception in §362(b)(4)); *In re N. Mariana Islands Ret. Fund*, 12-00003, 2012 WL 8654317, *2 (D. N. Mar. I. June 13, 2012) (*quoting* H.R.Rep. No. 595, 95th Cong. 311 (1977); S.Rep. No. 989, 95th Cong. 24 (1978) (internal notations omitted)).

[96] *In re Nortel Networks, Inc.*, 669 F.3d at 138-39. *In re N. Mariana Islands Ret. Fund*, 12-00003, 2012 WL 8654317 at *3.

49. The case *sub judice* is almost identical to the facts in *In re Nortel Networks.* Here, although IBRC was created by the Irish government, the Foreign Representatives are private parties responsible for administering IBRC's assets and ensuring that the assets' value is maximized. Furthermore, IBRC was funded and created when Anglo (a private limited company) and INBS were merged. Although IBRC is state-owned, it is standing in the shoes of a private party charged with liquidating the assets for distribution to creditors.

D. Foreign Proceeding

50. The first test is to verify that the foreign representatives have proven that the foreign bankruptcy is a "foreign main proceeding or foreign non-main proceeding within the meaning of section 1502."[97] Section 101(23) defines a foreign proceeding as:

> The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.[98]

51. The Court in *Betcorp* broke these criteria down into seven tests, all of which must be satisfied for a foreign bankruptcy to qualify as a foreign proceeding under the Model Law and, thus, Chapter 15. These elements are:

(i) a proceeding;

(ii) that is either judicial or administrative;

---

[97] 11 U.S.C. § 1517(a)(1).

[98] 11 U.S.C. § 101(23).

(iii) that is collective in nature;

(iv) that is in a foreign country;

(v) that is authorized or conducted under a law related to insolvency or the adjustment of debts;

(vi) in which the debtor's assets and affairs are subject to the control or supervision of a foreign court; and

(vii) which proceeding is for the purpose of reorganization or liquidation.[99]

i. A Proceeding

52. A "proceeding" has been identified as "acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice. In the context of corporate insolvencies, the hallmark of a 'proceeding' is a statutory framework that constrains a company's actions and that regulates the final distribution of a company's assets."[100] Such a statutory framework includes the "mechanism for commencing the Liquidation Proceedings, the effect on corporate governance, the duties and responsibilities of the liquidators, the rights of creditors, including priorities. . . ."[101]

53. The IBRC Act lays down a framework for the liquidation of IBRC. The Special Liquidators are appointed for the purpose of the winding up of IBRC, as set

---

[99] *Betcorp*, 400 B.R. at 277.

[100] *Betcorp Ltd.*, 400 B.R. at 278.

[101] *In re ABC Learning Centres Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010) *subsequently aff'd*, 728 F.3d 301 (3d Cir. 2013).

forth in section 7 of the IBRC Act.[102] The IBRC Act and the Companies Act constrain the Debtor's actions and regulates the final distribution of its assets.[103]

54. The IBRC Act grants the Minister broad powers to issue ministerial instructions that the Special Liquidators are obliged to follow pursuant to section 9(3) of the IBRC Act.[104] Furthermore, the actions undertaken by the Minister under the IBRC Act, including the issuance of ministerial instructions, remain subject to challenge under the public rules standards of Irish law.[105] The Court also notes that, to the extent that the Minister issues ministerial instructions with respect to the Irish Proceeding, such instructions are public and therefore creditors can know them in advance.[106] Notwithstanding the powers granted to the Minister, the Irish Proceeding liquidation would be for all intents and purposes consistent with a liquidation subject to direct court supervision.[107]

55. The Court finds that Irish proceeding is a "proceeding" under section 101(23) and, thus, this criterion is satisfied.

ii. Judicial or Administrative Character

56. When finding that the debtor's foreign proceeding was judicial or administrative in character, the Bankruptcy Court in *ABC Learning Centres* found that a "majority of the Liquidators' tasks are administrative in nature, e.g., collecting assets;

---

[102] *See* IBRC Act, § 7(1).

[103] *See* IBRC Act, §§ 6(5), 9, 10, 12, 13, 14; Companies Act, § 231(1).

[104] *See* IBRC Act, §§ 9(1), 9(2), 9(3).

[105] Hr'g Tr. 34:24-35:10, 42:4-8.

[106] Wallace Transcript, 46:23-47:3; Supplemental Wallace Declaration, ¶ 18; Hr'g Tr. 24:10-16.

[107] Wallace Transcript, 34:9-15, 35:8-11.

distributing assets pursuant to the priorities set forth in the [Australian] Corporations Act; conducting investigations of possible voidable transactions (e.g., preferences); circulating information to creditors; preparing various required reports; convening meetings."[108] The *ABC Learning Centres* court continued that the proceeding became judicial in character whenever the Australian Court exercises its supervisory powers under the Australian Corporations Act.[109]

57. Similarly, the Irish Proceeding has many characteristics that are administrative or judicial in character. First, many of the duties of the Special Liquidators are administrative in nature. For example, the Special Liquidators are charged with preserving books and records, gathering assets, valuing assets, developing procedures under the ministerial instructions for the disposition of assets, selling assets, reconciling claims, distributing proceeds from asset dispositions, conducting investigations with respect to former directors, reporting to the Minister, reporting to creditors, and providing notices to creditors and other constituencies.[110] Furthermore, the Special Liquidators have a duty to maximize value of IBRC's assets for the benefit of all creditors.[111]

58. In addition, the supervision of the Minister himself provides additional administrative character to the Irish Proceeding. The uncontroverted

---

[108] *ABC Learning Centres Ltd.*, 445 B.R. at 328 (citations omitted).

[109] *Id.*

[110] *See* Wallace Declaration, ¶¶ 32-40; Supplemental Wallace Declaration, ¶¶ 5, 6, 23; Wallace Transcript 31:8-12; Traynor Declaration, ¶¶ 15, 18; Companies Act, §§ 231(1), 231(2); FR Exhibits 9-11 (as authenticated by the Supplemental Wallace Declaration, ¶ 6).

[111] Wallace Transcript, 27:17-21; Traynor Transcript 77:21-78:3.

testimony of Mr. Traynor was that the Department of Finance functions as an administrative agency.[112] For instance, it issues rules and, according to both Messrs. Forde and Ryan, it is subject to judicial oversight pursuant to Ireland's public rules.[113] Indeed, the Finance Minister has issued rules in the form of the Ministerial Instructions in the context of the Irish Proceeding itself.[114]

59. Finally, the Irish Proceeding is also judicial in nature. All of the testifying experts agreed that section 280 of the Companies Act remains in effect, albeit modified, to permit any creditor to seek a ruling of the High Court with respect to "any question" arising in the Irish Proceeding.[115]

60. The Court finds that the Irish Proceeding is primarily administrative in character, and at time judicial in character and, thus, this criterion of section 101(23) has been satisfied.

iii. Collective in Nature

61. "A collective proceeding is one that considers the rights and obligations of all creditors. This is in contrast, for example, to a receivership remedy instigated at the request, and for the benefit, of a single secured creditor."[116]

---

[112] Hr'g Tr. 88:4-23.

[113] Hr'g Tr. 88:15-19, 34:24-35:10, 42:4-8.

[114] Hr'g Tr. 88:20-23. During argument, counsel for the Flynn Objectors argued that in effect the Department of Finance could never qualify as an administrative agency because it is supervised by a political appointee. Hr'g Tr. 140:6-12. By the same logic, virtually all of the administrative agencies of the U.S. would be disqualified (e.g., the U.S. Securities and Exchange Commission and the U.S. Department of Health and Human Services). Accordingly, the Court rejects this reasoning.

[115] Hr'g Tr. 34:24-35:6, 68:20-23; Traynor Transcript, 20:22-21:2, 34:22-35:6.

[116] *Betcorp Ltd.*, 400 B.R. at 281.

62. It is undisputed that all of the constituencies of IBRC are bound by the IBRC Act and the Irish Proceeding. Individual creditor action against IBRC is prohibited by the IBRC Act, absent permission of the High Court.[117] The IBRC Act adopts the comprehensive priority and distribution scheme set forth in the Companies Act.[118] Creditors of equal rank share pro rata in distribution proceeds.[119] This scheme would apply in any liquidation in Ireland.[120]

63. The Objectors presented testimonial evidence that the "real" purpose of the IBRC Act is to transfer the assets of the IBRC to another governmental entity, NAMA. However, the Court does not find such testimony persuasive, as the IBRC Act specifically adopts the distribution scheme set forth in the Companies Act, as stated *supra*.

64. Thus, the Irish Proceeding is a collective proceeding and satisfied this criterion of section 101(23).

---

[117] IBRC Act, § 6(2) ("no further actions or proceedings can be issued against IBRC without the consent of the Court"); Companies Act § 291.

[118] FR Exhibit 18, §§ 281, 285; Traynor Declaration, ¶ 14. The Objectors raise the issue of whether IBRC was solvent in February 2013 when the Irish Proceeding commenced. The solvency issue is irrelevant and does not affect whether the process is collective in nature. As such, the Court makes no finding on the solvency (or insolvency) of IBRC in February 7, 2013, the date on which the Irish liquidation proceeding under the IBRC Act was commenced.

[119] FR Exhibit 18, § 285(7).

[120] Traynor Transcript 15:19-23. Mr. Forde, on behalf of the Objectors, stated:

> Finally, the unique nature of this Act can be seen from its preamble and the statutory purposes proclaimed in s.3: it is not so much as to pay off this recently nationalized bank's various creditors as to resolve a major public indebtedness headache. This is reinforced by ss. 9 and 13's powers of instruction/direction given to the Minister of Finance.

Castleway Exh. 2 at ¶ 9 (Forde Supplemental Declaration). Although this is an interesting perspective, there is no evidence to support this contention. The statutory scheme established by the IBRC Act indicates that the process is collective in nature and, to the best of the Court's knowledge, the Finance Minister has not issued any instructions to the contrary.

iv. Located in a Foreign Country

65. There is no factual dispute that the Irish Proceeding is pending in Ireland. IBRC is an Irish company.[121] The Irish Proceeding is governed by Irish law.[122] The Special Liquidators are located in Ireland.[123] The testimony regarding the absence of any current lending, credit or deposit operations of IBRC in the U.S. was uncontroverted.[124] Judicial authority exists in the High Court.[125]

66. As such, the "foreign country" criterion in section 101(23) has been satisfied.

v. Authorized or Conducted under a Law Related to Insolvency or the Adjustment of Debtors

67. For the Irish Proceeding to qualify as a foreign proceeding, the proceeding must be authorized or conducted under a law related to insolvency or the adjustment of debtors.

68. It is undisputed that the Companies Act, as modified by the IBRC Act, governs all aspects of Irish companies from formation to dissolution. As a consequence, the Irish law governing the Irish Proceeding relates to insolvency.[126] In addition, it is undisputed that the IBRC Act relates to the adjustment of debts, inasmuch

---

[121] Wallace Declaration, ¶¶ 43, 58.

[122] FR Exhibits 3, 18, 20 (as authenticated by the Supplemental Traynor Declaration, ¶ 5).

[123] Wallace Declaration, ¶ 43.

[124] Supplemental Wallace Declaration, ¶ 12.

[125] IBRC Act, § 8; Companies Act, § 280.

[126] *See* Supplemental Forde Declaration, p. 7 (extract from MICHAEL FORDE, HUGH KENNEDY & DANIEL SIMMS, THE LAW OF COMPANY INSOLVENCY 5 (2nd ed. 2008)) ("[t]he present statutory regime governing liquidations of registered companies [in Ireland] is contained principally in Pt VI of the 1963 Act (ss. 206-313), as amended by Pt VI of the 1990 Act (ss. 122-179)").

as it provides for IBRC's assets to be liquidated free and clear of claims and distributed according to a priority scheme set forth in the Companies Act.[127]

69. Thus, this criterion of section 101(23) is satisfied.

vi. Debtor's Assets and Affairs Under a Foreign Court's Control or Supervision

70. Section 101(23) requires a foreign proceeding to be conducted in such a manner that the assets and affairs of the debtor are subject to the control or supervision of a foreign court. Section 1502 of the Bankruptcy Code defines "foreign court" as "a judicial or other authority competent to control or supervise a foreign proceeding."[128] In *ABC Learning Centres*, the Bankruptcy Court held that the Australian proceeding was supervised by a foreign court even when "1) actions in the Australian courts related to liquidation proceedings are typically initiated by interested parties, 2) Australian courts give deference to a business' "commercial judgment" and do not direct the day-to-day operations of a debtor, and 3) liquidators proceed with most of their duties without court involvement."[129]

71. Similarly, section 280 of the Companies Act provides for judicial review of "any question" posed by any creditor in connection with the Irish Proceeding.[130] Furthermore, all testifying experts agree that the actions of the Minister are subject to

---

[127] Companies Act, §§ 231(2)(a), (2)(i).

[128] 11 U.S.C. § 1502(3).

[129] *ABC Learning Centres Ltd.*, 445 B.R. at 332 ("Most actions in a U.S. Bankruptcy Court are upon the motion of an interested party and are not undertaken *sua sponte*, U.S. Bankruptcy Courts also give deference to business judgments and do not direct the daily activities of debtors, and the majority of U.S. bankruptcies proceed with minimal court involvement.")

[130] Companies Act, § 280.

judicial review under the public rules of Ireland.[131] The Foreign Representatives direct the day-to-day administration of the Irish proceedings and proceed with most of their duties without court involvement.

72. Although the Objectors contest that there is supervision by the foreign court, Mr. Ryan conceded on cross-examination that the section 280 of the IBRC Act states that a creditor can apply to court to determine any question arising in the winding-up of IBRC, that the Irish courts may enter any such order as the court thinks is just, and that creditors may apply to Irish courts for injunctive relief (although such relief may be difficult to obtain).[132]

73. Thus, based on the provisions of the IBRC Act and the evidence presented, the Court finds that the Irish Proceedings are under the control and supervision of a foreign court and this criterion of section 101(23) is satisfied.

vii. Reorganization or Liquidation Purpose

74. The final element of section 101(23) requires that the foreign proceeding have a reorganization or liquidation purpose.

75. There is no dispute that the purpose of the Irish Proceeding and the IBRC Act is to liquidate IBRC.[133] Although the IBRC Act may also reference additional

---

[131] *See* Hr'g Tr. 34:24-35:10, 42:4-8; Supplemental Wallace Declaration, ¶ 17; Supplemental Traynor Declaration, ¶ 7.

[132] Hr'g Tr. 68:12-72:20.

[133] IBRC Act, § 3(b).

purposes, the fact remains that among those stated purposes is the orderly wind-down of IBRC.[134]

76. As such, the Court finds that the final criterion of section 101(23) is satisfied. In summary, the Court finds that the Irish Proceeding is a "foreign proceeding" pursuant to section 101(23).

E. The Irish Proceeding Meets the Requirements for Recognition under Section 1517

77. Now that the Court has found that the Irish Proceeding is a "foreign proceeding," the Court will turn to section 1517 in determining whether the requirements for recognition are met.

i. The Irish Proceeding is a Foreign Main Proceeding

78. A foreign main proceeding is defined as a "foreign proceeding pending in the country where the debtor has the center of its main interests."[135] A foreign nonmain proceeding is any other proceeding "pending in a country where the debtor has an establishment."[136] "Establishment" is defined as "any place of operations where the debtor carries out a nontransitory economic activity."[137]

---

[134] *See id.*

[135] 11 U.S.C. § 1502(4).

[136] 11 U.S.C. § 1502(5).

[137] 11 U.S.C. § 1502(2).

79. Section 1516(c) provides that "[i]n the absence of evidence to the contrary, the debtor's registered office . . . is presumed to be the center of the debtor's main interests."[138]

80. Courts consider several factors when making a "center of main interests" determination, including:

> 1. the location of the debtor's headquarters;
>
> 2. location of those who actually manage the debtor;
>
> 3. the location of the debtor's primary assets;
>
> 4. the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and/or
>
> 5. the jurisdiction whose law would apply to most disputes.[139]

81. IBRC's center of main interest is in Dublin, Ireland. No objection was raised and nor evidence offered to rebut the presumption that IBRC's "center of main interests" is in Ireland. At no time since the filing of the Irish Proceedings did the Debtor have a branch or agency in the United States, nor was IBRC engaged in any business in the United States.

82. As such, the Court concludes that the Irish Proceeding is a foreign main proceeding.

---

[138] 11 U.S.C. § 1516(c); *See In re Tri–Continental Exchange Ltd.*, 349 B.R. 627, 635 (Bankr. E.D. Cal.2006) (recognizing the winding up proceedings of insurance companies in St. Vincent and the Grenadines as foreign main proceedings).

[139] *ABC Learning Centres Ltd.*, 445 B.R. at 333 (*citing In re Bear Stearns*, 389 B.R. 325 (S.D.N.Y.2008)).

ii. The Petitioners are Persons and Foreign Representatives

83. "Foreign Representative" means "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding."[140] "The term 'person' includes individual, partnership, and corporation . . ."[141]

84. Pursuant to the authority granted under section 4 of the IBRC Act, Messrs. Kieran Wallace and Eamonn Richardson are individuals whom the Minister appointed to be Special Liquidators under section 7(1) of the IBRC Act. As Foreign Representatives they administer the liquidation of IBRC's assets and who were appointed to act as representatives of the Irish Proceedings, thereby meeting the requirements of section 1517(a)(2).

iii. The Petition Meets the Requirements of Section 1515

85. The final requirement for recognition under § 1517 is that the petition for recognition meets the procedural requirements of § 1515, which states:

> § 1515. Application for recognition
>
> (a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.
>
> (b) A petition for recognition shall be accompanied by—
>
> (1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

---

[140] 11 U.S.C. § 101(24).

[141] 11 U.S.C. § 101(41).

> (2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or
>
> (3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.
>
> (c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.
>
> (d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.[142]

86. The Court has already determined that the Special Liquidators are "foreign representatives" and that the Irish Proceeding is a "foreign proceeding." The Special Liquidators properly filed Petitions seeking recognition. The Wallace Declaration[143] and the Traynor Declaration[144] are acceptable evidence under section 1515(b)(3) of the existence of the foreign proceeding and the appointment of the Foreign Representatives. The Chapter 15 Petition was accompanied by a statement by the Foreign Representatives that no other foreign proceedings are pending with respect to the Debtor other than the Irish Proceeding.[145]

---

[142] 11 U.S.C. § 1515. The translation requirement of section 1515(c) is inapplicable, as the declarations filed with the Petition (D.I. 4 and 5, as discussed *infra*) obviates the need for documentary evidence under section 1515(b)(1) and (b)(2) and, furthermore, the original language of the documents issued in Ireland related to these proceedings is English. *ABC Learning Centres Ltd.*, 445 B.R. at 334.

[143] D.I. 4.

[144] D.I. 5.

[145] *See* Wallace Declaration, ¶ 58.

iv. Conclusion

87. The Court finds that the Petition meets the requirements for recognition under §1517. As such, the Court will turn to the Objectors' argument that recognition of the Irish Proceeding is contrary to U.S. public policy.

F. Recognition of the Irish Proceeding is Not Manifestly Contrary to U.S. Public Policy

88. "Nothing in [Chapter 15] prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States."[146] The public policy exception has been narrowly construed, because the "word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States."[147] "The purpose of the expression 'manifestly', . . . is to emphasize that public policy exceptions should be interpreted restrictively and that [the exception] is only intended to be invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State."[148]

89. "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

---

[146] 11 U.S.C. § 1506.

[147] *ABC Learning Centres Ltd.*, 728 F.3d 301, 309 (3d Cir. 2013) *cert. denied*, 134 S. Ct. 1283 (U.S. 2014) (*quoting* H.R.Rep. No. 109–31(1), at 109 (2005) reprinted in U.S.C.C.A.N. 88, 172) (internal quotation marks omitted).

[148] *Id.* (*quoting* U.N. Comm'n on Int'l Trade Law, Guide to Enactment of the UNCITRAL Model Law on Cross–Border Insolvency, ¶ 89, U.N. Doc A/CN.9/442 (1997)).

protections' or where recognition 'would impinge severely a U.S. constitutional or statutory right.'"[149]

90. The Objectors introduced evidence regarding the following potential public policy issues: (a) the alleged lack of independence of the Special Liquidators from the Finance Minister; (b) the alleged inability to challenge the issuance of the deed of charge[150] to the Central Bank of Ireland as a fraudulent preference under Irish law; and (c) the alleged inability of an IBRC borrower to make a claim for violation of restrictions on the transfer of a borrower's loan.

91. In addition, the Objectors argue that the Irish Proceeding discriminates against or disadvantages U.S. citizens, deprives U.S. creditors of due process, is procedurally unfair on its face, violates the laws and rights of the citizens of the United States, impairs the U.S. Constitutional rights of creditors, and does not grant the same fundamental rights that creditors would receive in the U.S. Bankruptcy Courts.

92. The Objectors argue that the IBRC Act was for the sole political purpose of recovering the Irish Government's investment in Anglo and is only to maximize the benefit to the Irish Government. The Objectors continue that IBRC was solvent at the time of the commencement of the Irish Proceeding and the Irish Proceeding was only commenced at the demand of its largest creditor. Adding that at the conclusion of the

---

[149] *Id.* (*quoting In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 570 (E.D.Va.2010)).

[150] A copy of the recorded deed of charge (including the official recording stamp) was admitted in evidence as FR Exhibit 29.

Irish Proceedings, there will be no funds available in Ireland to compensate any unsecured creditors.[151]

93. The Court does not find these arguments or the evidence presented persuasive based on the following:

i. Irish Proceeding Does Not Conflict with any Law of the United States

94. The Objectors have failed to identify any (alleged) conflict between the applicable Irish statutes and U.S. Law. [152]

---

[151] The Objectors argue that section 6 of the IBRC Act restricts the rights of creditors to take legal action against the Debtor or Special Liquidators. In particular, the Irish Court, at the request of the Special Liquidators, has denied leave for the Objectors to bring an action in tort against IBRC; furthermore, upon recognition, section 362 of the Bankruptcy Code will deprive the Objectors of their constitutional right to due process. It appears that the Objectors are arguing both sides of the same coin – the Court should deny recognition because the Irish Proceeding is not being overseen by the Irish courts and on the flip side, the **Irish Court** denied leave for the Objectors to bring an action in tort against IBRC. The Court is not persuaded by the arguments on either side of this coin. Furthermore, the Court finds that triggering the automatic stay upon filing of recognition is one of the fundamental purposes of recognition. Pursuant to § 1520, recognizing the Liquidation Proceedings as foreign main proceedings triggers the automatic stay of § 362. 11 U.S.C. § 1520. The purpose of the automatic stay is to "prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor." *Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982). Furthermore, "[t]he automatic stay is not meant to be absolute, and the Bankruptcy Code provides for relief from stay in appropriate circumstances." *ABC Learning Centres Ltd.*, 445 B.R. at 336. As such, the Objectors' rights are protected as they can seek relief from the automatic stay in the appropriate circumstances.

[152] The Foreign Representatives, on the other hand, identified several U.S. statutes that are largely comparable with the aspects of the IBRC Act of which the Objectors complain. In particular, HERA was passed with the specific intent of limiting its applicability to a handful of entities, and provided new statutory authority for the conservatorship or receivership of these entities by the Federal Housing Finance Agency ("FHFA"), an administrative agency of the United States government, specifically created to govern such proceedings. 12 U.S.C. § 4617(a)(1). HERA provides for a stay on creditor actions, which may only be lifted by judicial order. 12 U.S.C. § 4617(b)(10). Conservators and receivers appointed under HERA may sell or transfer any assets or liabilities of the liquidating entity without prior approval, assignment, or consent from any stakeholder. 12 U.S.C. § 4617(b)(2)(G). Judicial review of actions taken by the FHFA in its role as conservator or receiver is limited, but still available under the statute. 12 U.S.C. § 4617(b)(11)(D), 4617(f). Most critically in the instant case, the FHFA has limited authority to challenge security interests granted to entities in which the United States has an interest, such as the Federal Home Loan Bank and the Federal Reserve Bank. 12 U.S.C. § 4617(d)(15).

95. The Objectors contend that the Special Liquidators are obliged, under the IBRC Act, to follow the instructions of the Minister, and that the Court should therefore infer that the Special Liquidators lack independence from the Minister.[153] The Objectors did not introduce any direct evidence that the Minister has exercised such authority in a manner that would conflict with United States laws. In fact, one of the Objectors' own experts, Mr. Forde, confirmed that all of the ministerial instructions issued to date are in fact consistent with the maximization of value for creditors (and have been, for that reason, largely unnecessary).[154] In addition, the Foreign Representatives offered the uncontroverted testimony of Mr. Wallace that the Minister had disclaimed any ability to

---

HERA was enacted in the wake of the same global financial crisis which has led the Irish government to first create and then liquidate IBRC. Both statutes represent efforts by the U.S. and Irish governments, respectively, to protect the stability and integrity of their financial systems. In addition, both statutes take certain steps to protect investments made by those respective governments in financial institutions. In fact, another U.S. statute, the OLA employs much more extreme measures than the IBRC Act in its efforts to protect investments by the U.S. government into "too big to fail" institutions. The OLA puts the FDIC, an agency that has special expertise regarding the supervision of large financial institutions, in charge of liquidations under the OLA. 12 U.S.C. § 5382(a)(I)(a)(i). The OLA revises the priority scheme generally applicable in proceedings under the United States Bankruptcy Code, placing "administrative expenses of the receiver" first in priority, followed by "any amounts owed to the United States." 12 U.S.C. § 5390(b)(1). Any other administrative, secured, and unsecured claims only become entitled to potential distributions from the estate after each and every claim of the United States, whether secured or unsecured, is paid in full. By contrast, the IBRC Act leaves undisturbed the general priority scheme established by the Companies Act. The rationale for payment of the Irish government is entirely consistent with a general policy of providing full recovery to secured creditors before unsecured creditors may receive any recovery.

In addition, the Court finds that these United States statutes contain comparable provisions regarding, among others: (a) control of the process by U.S. regulatory or administrative agencies which are experienced in dealing with large financial institutions (12 U.S.C. § 4617(a)(1); 12 U.S.C. § 5382(a)(I)(A)(i)); (b) limitations on judicial review (12 U.S.C. §§ 4617(b)(11)(D), 4617(f); 12 U.S.C. § 5390(e)); and (c) limitations on avoidability or claims against U.S. agencies and governmental institutions (12 U.S.C. § 4617(d)(15), 12 U.S.C. §§ 5390(a)(9)(D), 5390(a)(11)).

[153] In addition, the Objectors did not identify any statute or policy which calls for a liquidator or the supervisor of a liquidation proceeding to be "independent" in the manner alleged by the Objectors.

[154] Supplemental Forde Declaration, ¶ 4; Hr'g Tr. 20:9-22:10.

control the Special Liquidators in their day to day duties to administer the liquidation of IBRC.[155]

96. As stated above, the Objectors also allege an inability to challenge the issuance of the deed of charge to the Central Bank of Ireland as a fraudulent preference under Irish Law. There is no mandatory element of recognition implicated by the alleged inability of parties to challenge the deed of charge as a fraudulent preference and the alleged solvency of IBRC.[156] In addition, such alleged inability to challenge the deed of charge is likewise not in conflict with U.S. law. Under U.S. law, Congress has the ability to limit the ability to avoid certain transactions. Accordingly, the Court concludes that the issue of IBRC's solvency and the fraudulent preference allegations of the Flynn Objectors is largely irrelevant to the issue of recognition of the Irish Proceeding.[157]

97. Lastly, the Objectors contend that the IBRC Act prevents the assertion of a claim for violation of transfer restrictions in their loan documents. However, the Objectors presented no evidence that the IBRC Act prevented or permitted such

---

[155] Supplemental Wallace Declaration, ¶ 19; Wallace Transcript 58:17-59:16.

[156] *See ABC Learning Centres Ltd.*, 728 F.3d at 306 (recognition is mandatory where the insolvency proceeding meets the statutory criteria).

[157] Furthermore, there was no testimony of evidence presented regarding whether the deed of charge could be challenged as a fraudulent preference under Irish law. *See* Supplemental Ford Declaration, ¶ 5 ("However, that IBRC gave the security to the Central Bank, in the circumstances here, may not have been a fraudulent preference . . . "). Furthermore, the factual issue of IBRC's insolvency is not free from doubt. *See* Supplemental Ryan Declaration, ¶ 11; Traynor Transcript, 32:14-16 ("[O]n the 7th of February[,] I believe the company was insolvent."); *see also* Wallace Transcript, 23:18-24:11.

claims.[158] Even assuming that the IBRC Act did bar such a claim, the Objectors failed to identify how such a claim prohibition would conflict with U.S. law. To the contrary, sections 363 and 365 of the Bankruptcy Code, in fact, permit sales of assets free and clear of transfer restrictions under appropriate circumstances, and section 502 of the Bankruptcy Code limits bankruptcy claims that would otherwise be legitimate under state law.[159] As such, the Court finds that this concern is too attenuated or hypothetical to be a violation of public policy.

ii. Even if the IBRC Act Conflicted with the Law of the United States, Recognition is Not "Manifestly Contrary" to the Public Policy of the United States

98. As set forth above, the Objectors have failed to identify any conflict with the law of the United States. Nonetheless, even assuming that such a conflict could be identified, the mere identification of a contrary statute or policy of the United States is insufficient, such conflict must be "manifestly contrary" to U.S. policy.[160] In determining whether the IBRC Act violated the U.S. constitution or the laws of the U.S.,

> we must evaluate the principles of comity to ensure that the . . . [foreign] proceeding does not offend our notions of justice. Foreign proceedings are generally recognized in the United States, as long as the foreign laws comport with due process and treat the claims of local creditors fairly. We favor granting comity to foreign bankruptcy proceedings because the assets of the debtor can be dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic or piecemeal fashion. . . . [T]he foreign laws need not be identical to their counterparts under the laws of the

---

[158] Mr. Forde's declaration stated that "[a]t most, the proposition is arguable." Supplemental; Forde Dec., ¶ 6.

[159] 11 U.S.C. §§ 363, 365, 502.

[160] *ABC Learning Centres Ltd.*, 728 F.3d at 309 (citation omitted).

> United States; they merely must not be **repugnant** to our laws and policies.[161]

The Third Circuit has explained that such a conflict must arise under "exceptional circumstances" involving matters of "fundamental importance" to the United States.[162] Indeed, these circumstances would ordinarily arise in circumstances (a) where "the procedural fairness of the foreign proceeding is in doubt" or (b) where a "U.S. constitutional or statutory right" is severely impinged.[163]

99. The Objectors can point to no evidence to show that the Irish Proceedings are not affording substantive and procedural due process protections. Furthermore,

---

[161] *In re Schimmelpenninck*, 183 F.3d 347, 365 (5th Cir. 1999) (emphasis added; internal quotation marks, footnotes, and citations omitted).

[162] *ABC Learning Centres Ltd.*, 728 F.3d at 309. The Third Circuit stated:

> 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." *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 570 (E.D.Va.2010). An Israeli insolvency proceeding was found to be manifestly contrary to public policy in *In re Gold & Honey, Ltd.*, because the receivership initiated in Israel after Chapter 11 proceeding began in the U.S. seized the debtor's assets, violating the bankruptcy court's stay order. 410 B.R. 357, 371–72 (Bankr.E.D.N.Y.2009). This conduct hindered two fundamental policy objectives of the automatic stay: "preventing one creditor from obtaining an advantage over other creditors, and providing for the efficient and orderly distribution of a debtor's assets to all creditors in accordance with their relative priorities." *Id.* at 372 (discussing "serious ramifications" if future creditors followed suit and seized assets under a United States court's jurisdiction in violation of its orders). In *In re Ephedra Prods.*[,] a Canadian insolvency proceeding was challenged under the public policy exception because it did not afford a right to a jury trial. 349 B.R. at 335. Despite our constitutional right to a jury, Canada's lack of a right to a jury trial did not contravene a fundamental policy because the Canada proceedings afforded substantive and procedural due process protections, and "nothing more is required by § 1506 or any other law." *Id.* at 337.

[163] *Id.*

none of the issues raised by the Objectors involve constitutional or statutory rights available in the United States.

100. Rather, the IBRC Act has simply "established a different way to achieve similar goals" of United States statutes.[164] Granting recognition of the Irish Proceeding would not only comport with the intent of section 1506 of the Bankruptcy Code, but, more importantly, would also support the strong public policy of the United States in favor of a universalism approach to complex multinational bankruptcy proceedings.[165]

VI. Conclusion

101. Based on the factual findings above, Recognition is GRANTED as each of these elements are satisfied as set forth above pursuant to sections 101(23) and 1517 of the Bankruptcy Code. The Flynn Objection and the Castleway Walnut Objection are OVERRULED.

102. The Court has previously entered an Order consistent with these findings and conclusions.[166]

Christopher S. Sontchi
United States Bankruptcy Judge

Dated: April 30, 2014

[164] *Id.* at 311.

[165] *Id.* at 306 ("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.").

[166] D.I. 187.