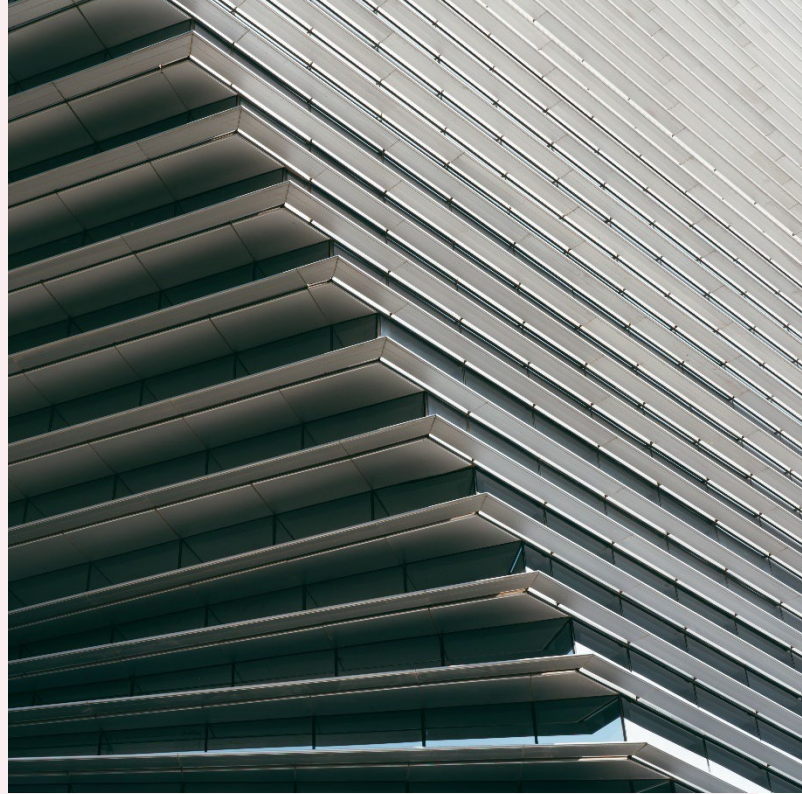


## First of Its Kind: U.S. Bankruptcy Court Recognizes Proceeding Under Luxembourg's New Restructuring Regime in Chapter 15 Case

March 27, 2026



On March 25, 2026, the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") recognized ARD Finance, S.A.'s Luxembourg judicial reorganization proceeding (*procédure de réorganisation judiciaire par accord collectif*) as a foreign main proceeding under Chapter 15 of the U.S. Bankruptcy Code (the "**Bankruptcy Code**") over the objection of certain creditors arguing that the proceeding was not a "collective proceeding" and that it was manifestly contrary to U.S. public policy.<sup>1</sup> Notably, this is the first Chapter 15 recognition of a proceeding commenced pursuant to Luxembourg's law of 7 August 2023 on business preservation and modernisation of the bankruptcy regime (the "**Luxembourg Restructuring Law**").

### Key issues

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### Luxembourg Restructuring Law

The Luxembourg Restructuring Law, which came into effect on November 1, 2023, modernized the country's insolvency framework and introduced new preventive restructuring tools aligned with the EU Restructuring Directive. One such mechanism—the judicial reorganisation procedure by collective agreement (*procédure de réorganisation judiciaire par accord collectif*) or

<sup>1</sup> *In re ARD Finance, S.A.*, No. 25-12794 (MG), 2026 WL 817458, at \*20 (Bankr. S.D.N.Y. Mar. 26, 2026).

"JRP"—is a court-supervised proceeding designed to facilitate the restructuring of financially distressed companies through a collective agreement with creditors.

The JRP establishes a statutory framework in which creditors are formally identified, provided notice of the JRP proceeding, informed of the amount and classification of their claims, and granted defined procedural rights to assert, contest, and protect those claims before a Luxembourg court. Creditors whose rights are affected by a proposed plan are entitled to participate in the process, including by challenging claim amounts and classifications and voting on the plan in accordance with prescribed class-based voting and priority rules.

The JRP provides multiple avenues for judicial oversight, including automatic court review of the plan, appellate review of confirmation decisions, and the ability to seek revocation of a plan that cannot be performed or materially prejudices creditors. In addition, creditors may request the appointment of an interim administrator in cases involving serious management misconduct, and Luxembourg courts may scrutinize the role of intragroup creditors in the voting process and disregard insider votes if necessary to ensure compliance with statutory approval standards.

## Background

ARD Finance, S.A. ("**ARD**"), along with its subsidiaries ARD Group Finance Holdings S.A., Ardagh Group S.A. ("**AGSA**"), and certain other operational subsidiaries (together, the "**Ardagh Group**"), is a global supplier of metal and glass packaging. ARD historically functioned as a holding and financing entity within the Ardagh Group. It is a Luxembourg public limited company (*société anonyme*) with its registered office in Luxembourg. ARD's directors are based in Luxembourg, all board meetings have taken place there, and ARD maintains its books, records, and a bank account in Luxembourg.

In 2019, ARD issued two series of payment-in-kind toggle notes due in 2027 (the "**PIK Notes**"): €1 billion in euro-denominated notes and \$895 million in U.S. dollar-denominated notes. The PIK Notes were issued pursuant to an indenture governed by New York law, which also contains a New York forum-selection clause. ARD's obligations under the PIK Notes were secured by certain share pledges covering shares in AGSA.

As of the summer of 2025, Ardagh Group's total debt under its senior notes and PIK Notes was approximately \$4.3 billion, an amount the group was unable to repay. After protracted negotiations between the Ardagh Group, its major shareholder, and a group of cross-holders of senior unsecured notes and PIK Notes (the "**Cross-Holders**"), the parties reached an agreement on a recapitalization transaction (the "**Recapitalization Transaction**") to reduce leverage through debt-for-equity exchanges and a \$1.5 billion capital infusion. Notably, the agreement did not include the involvement or consent of ARD or the holders of the PIK Notes (the "**PIK Noteholders**") that were not Cross-Holders. As part of the implementation, consenting creditors, holding approximately 80% of the PIK Notes, directed the collateral agent under the

PIK Notes indenture to foreclose on the shares securing the PIK Notes, thereby stripping the PIK Noteholders of their security interests in the equity of AGSA before the commencement of the Luxembourg Proceeding.

In November 2025, ARD filed an application to open a JRP under Articles 12 and 13 of the Luxembourg Restructuring Law to restructure its liabilities under the PIK Notes (the "**Luxembourg Proceeding**"). In December 2025, the Luxembourg court formally opened the Luxembourg Proceeding.

In the Luxembourg Proceeding, ARD's proposed restructuring includes, among other measures, a transfer of 7.5% of shares in the parent company of the Ardagh Group to the PIK Noteholders. The proposal has not been approved yet.

An ad hoc group of PIK Noteholders (the "**PIK AHG**") sought to appear in the Luxembourg Proceeding through a motion to intervene. Although the Luxembourg court denied the PIK AHG's motion to intervene at the time, the PIK Noteholders are not precluded from raising objections within the Luxembourg Proceeding.

On December 14, 2025, ARD's foreign representative filed a Chapter 15 petition for recognition of the Luxembourg Proceeding. The PIK AHG objected to recognition on two principal grounds.

### **1. The Luxembourg Proceeding is a Not a "Collective Proceeding" Under Chapter 15 of the Bankruptcy Code.**

The PIK AHG argued that the Luxembourg Proceeding was not a collective proceeding, because it was incapable of addressing or scrutinizing the Recapitalization Transaction—through which, the group alleged, key economic outcomes were already determined, liens were stripped, and value was transferred to existing equity—thereby depriving dissenting PIK Noteholders of meaningful participation and protection. Notably, but for the pre-filing "manufactured lien stripping", the PIK AHG argued that the PIK Noteholders would be deemed secured creditors and if secured creditors would vote to reject the plan in the Luxembourg Proceeding, it could not be approved. Permitting the lien stripping, however, classified holders of PIK Notes as unsecured creditors in a class where already-accepting creditors (i.e., the parent company of the Ardagh Group holding the exchanged PIK Notes) would carry the vote. The Luxembourg Proceeding so far did not afford dissenting creditors the opportunity to challenge classification, while in the Chapter 11 context that would be possible.

ARD's foreign representative responded that the Luxembourg Proceeding was collective, because it established a statutory, court-supervised framework that provided for notice to all affected creditors, classification of claims, voting procedures, judicial confirmation of a plan, and had binding effects. Moreover, the foreign representative argued that the PIK AHG's objections improperly conflated the limited, threshold inquiry at the recognition stage with the merits of the restructuring and alleged pre-filing misconduct.

## **2. Recognition Would Be Manifestly Contrary to Public Policy Pursuant to Bankruptcy Code Section 1506.**

The PIK AHG contended that the agreements regarding the Recapitalization Transaction all occurred without any court supervision, and recognition would effectively insulate those pre-petition transactions from judicial review, ratify a \$300 million payment to parent equity, and subordinate secured PIK Noteholders (whose liens were stripped) to insiders, among other things, together amounting to violations of due process and fundamental priority principles that warranted denial of recognition.

ARD's foreign representative responded that section 1506's public policy exception was to be narrowly construed and focused on whether the foreign insolvency regime itself was fundamentally repugnant to U.S. law, not on disputed allegations concerning restructuring negotiations or value transfers. In fact, the foreign representative argued that the Luxembourg Proceeding afforded robust procedural protections and avenues for creditor participation and challenges, and any objections relating to plan treatment, priority, or enforcement could be addressed in the Luxembourg court in the first instance or, if necessary, at a later Chapter 15 enforcement stage in the U.S. With respect to the PIK AHG's motion to intervene that the Luxembourg court had denied at the outset, the foreign representative noted that it was merely premature and that the PIK AHG maintained the ability to participate in the Luxembourg Proceeding.

### **The Bankruptcy Court Found the Luxembourg Proceeding Was a Foreign Main Proceeding Under Chapter 15 of the Bankruptcy Code.**

After analyzing the relevant criteria, the Bankruptcy Court concluded the Luxembourg Proceeding satisfied the recognition requirements as a foreign main proceeding—namely, that (1) the foreign proceeding constituted a "foreign main proceeding"; (2) the foreign representative applying for recognition was a person or body; and (3) the petition met the requirements of section 1515 of the Bankruptcy Code.

#### **1. ARD was Eligible to Be a Debtor Under the Bankruptcy Code.**

As an initial matter, the Bankruptcy Court examined whether ARD was eligible to be a Chapter 15 debtor. As certain courts—including those in the Second Circuit—have held, a Chapter 15 debtor must satisfy certain eligibility requirements to be a debtor under section 109(a) of the Bankruptcy Code, which requires a debtor to have a domicile, place of business, or property in the U.S. Under well-established precedent, both ARD's retainer with its New York restructuring counsel that was held in a New York client trust account, and the fact that the PIK Notes are governed by New York law and contain a New York forum-selection clause, was sufficient to satisfy this requirement.

#### **2. The Luxembourg Proceeding Was a Foreign Main Proceeding.**

Turning to the foreign main proceeding analysis, the Bankruptcy Court examined whether the Luxembourg Proceeding was a "foreign

proceeding." Section 101(23) of the Bankruptcy Code defines a "foreign proceeding" as:

[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.

11 U.S.C. § 101(23) (emphasis added).

Focusing on the "collective" aspect, the key question for the Bankruptcy Court was whether the process considered the interests of all creditors, with additional indicators including notice, provisions for the distribution of assets according to statutory priorities, and statutory mechanisms for creditors to seek judicial review of the proceeding. The Bankruptcy Court determined that the Luxembourg Restructuring Law establishes a structured, court-supervised insolvency process that ensures notice to all affected creditors, provides for the classification of creditors, incorporates voting procedures, allows for judicial review of a proposed restructuring plan, and binds dissenting creditors once statutory requirements are met. As a result, the Bankruptcy Court concluded that the PIK AHG did not demonstrate that the Luxembourg Proceeding failed to protect the rights of all creditors or lacks the essential characteristics of a collective insolvency proceeding—and any grievances, including regarding improper lien stripping or classification could still be raised in the Luxembourg Proceeding, such as through plan voting. Indeed, the PIK AHG has raised such objections in the Luxembourg Proceeding.

Having found that the Luxembourg Proceeding was a foreign proceeding, the Bankruptcy Court next analyzed whether the Debtor's center of main interests ("**COMI**") was in Luxembourg such as to make it a foreign *main* proceeding.

The Bankruptcy Code states that a foreign proceeding shall be recognized as a "foreign main proceeding" if it is pending in the country where the debtor has its COMI. The relevant temporal anchor for the determination of the location of the debtor's COMI is the date on which the Chapter 15 petition is filed. Notably, while the Bankruptcy Code does not define COMI, in the absence of an objection or evidence to the contrary, a debtor's registered office or habitual residence is presumed to be its COMI.

The Bankruptcy Court found ARD's COMI was presumed to be in Luxembourg as of the date ARD filed its Chapter 15 petition, citing ARD's registered office. The PIK AHG could not overcome this presumption given ARD's Luxembourg incorporation and the fact that its records, banking activities, board management, and restructuring activities were located or took place in Luxembourg. The Bankruptcy Court therefore concluded that ARD's COMI was in Luxembourg, and after determining that the remainder

of the requirements under sections 1515 and 1517(a) were satisfied, the Bankruptcy Court held that the Luxembourg Proceeding qualified as a foreign main proceeding. This has the effect of staying virtually all actions against ARD and any of its assets in the U.S.

### **3. The Public Policy Exception Did Not Apply.**

The Bankruptcy Court rejected the PIK AHG's argument that recognition of the Luxembourg Proceeding was manifestly contrary to public policy under section 1506, which precludes any relief requested in Chapter 15 that is "manifestly contrary to the public policy of the United States." The Bankruptcy Court emphasized that the public policy exception is a narrow one, reserved for only exceptional circumstances involving fundamental U.S. policies. Although the Bankruptcy Court acknowledged the PIK AHG raised serious allegations regarding, among other things, the pre-filing transactions and value transfers to equity, those allegations did not demonstrate that Luxembourg law fundamentally lacked due process or basic creditor protections—also because such allegations had not yet been ruled on by the Luxembourg court. Even if such allegations were not examined, that in itself would not indicate the Luxembourg Proceeding was manifestly contrary to public policy given the robust protections afforded to creditors. Moreover, the Bankruptcy Court held that the (rare) decisions where the public policy exception was applied were distinguishable.

## **Conclusion**

The recognition of ARD's Luxembourg Proceeding is an important precedent for future proceedings under the new Luxembourg Restructuring Law that seek recognition in the U.S. While the recognition request in the *ARD* case was contested, the objections did not directly affect the limited, threshold inquiry at the recognition stage—namely, whether (1) the foreign proceeding constituted a "foreign main proceeding"; (2) the foreign representative applying for recognition was a person or body; and (3) the petition met the requirements of section 1515 of the Bankruptcy Code. As the Bankruptcy Court noted, no restructuring plan has yet been approved in ARD's Luxembourg Proceeding. If ARD's foreign representative were to seek Chapter 15 recognition of the Luxembourg plan, creditors' objections may be renewed and evaluated in that context at that time.



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