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## ENFORCEABILITY OF FOREIGN INSOLVENCY JUDGMENTS: *IN RE AGROKOR D.D., ET AL.*

*Judgments, orders, and settlement agreements obtained in home country insolvency proceedings face an uncertain reception when parties seek to enforce them abroad. The authors discuss the varied approaches to enforcement applied in London, Singapore, and by bankruptcy Judge Glenn in the Agrokor case in New York City. They address in detail Judge Glenn's findings with respect to comity, discretionary relief, and due process in approving the enforcement of a settlement agreement entered into and approved in Agrokor's Croatian insolvency proceeding.*

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In today's growing global economy with the proliferation of cross-border investments and trade, cross-border restructurings are becoming increasingly common. When times are good, such expansion can provide large advantages to a company. However, when financial difficulties arise globally and a company is forced to initiate an insolvency proceeding in its home jurisdiction, the issue arises whether orders or settlement agreements approved in such insolvency proceeding will be enforced abroad. Decisions in recent years entered by courts in three of the largest financial centers of the world — London, Singapore and New York City — demonstrate that foreign insolvency judgments may not always be consistently enforced worldwide.

### THE UNITED KINGDOM APPROACH

One such example is the case law arising from the *Rubin v. Eurofinance S.A.* line of cases in the United Kingdom and the more recent decision by the UK

Supreme Court.<sup>1</sup> In *Rubin*, a U.S. federal bankruptcy court entered a default judgment against residents of England for the recovery of a fraudulent transfer of funds. The English proceedings sought to enforce the U.S. judgment against the individuals.

On appeal, the UK Supreme Court reversed the lower court's decision to enforce the U.S. judgment based on the traditional English common law rules. The court found that if there were different rules governing the enforcement of foreign judgments in avoidance proceedings, the court would be obligated to determine or develop two jurisdictional rules. In the majority opinion, Lord Collins, refusing to enforce the U.S. judgment, declared that it was "wholly unrealistic" that "a person who sells goods to a foreign company accepts

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<sup>1</sup> *Rubin v Eurofinance SA*, [2012] UKSC 46.