

Секция «44.5 Актуальные вопросы права Англии и США (на английском языке)»

## **Cross-Border Insolvency: Recognition of Foreign Bankruptcy Proceedings in the USA**

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The U.S. framework for cross-border insolvency, codified in Chapter 15 of the Bankruptcy Code, implements the UNCITRAL Model Law to provide ancillary assistance to foreign bankruptcy proceedings rather than replace them. The process, initiated by a foreign representative, hinges on the court's classification of the proceeding as either "main" or "non-main" under Section 1502. This determination is based on the location of the debtor's "center of main interests" (COMI) for a main proceeding, or the presence of an "establishment" for a non-main one. Although Section 1516 establishes a rebuttable presumption that COMI is the debtor's place of registration, U.S. courts apply a multi-factor test-examining the location of headquarters, primary assets, creditors, and applicable law-to identify the actual seat of management. In multinational corporate groups, if subsidiaries are integrated into the parent company's operations, their COMI may be found to be in the parent company's country even if they are formally registered in the U.S.

Contemporary case law demonstrates the superiority of the structured Chapter 15 process over common law alternatives such as adjudicatory comity. The *Wayne Burt Pte. Ltd. v. Vertiv* case showed that reliance solely on comity risks significant delays due to its complex multi-factor test, whereas a parallel application under Chapter 15 secured recognition of a Singaporean judgment within two months. However, recognition is not automatic: the foreign proceeding must be "collective" in nature, aimed at satisfying claims of all creditors under court or administrative control, as defined in Section 101(23). The *Global Cord Blood Corporation* case (2022) illustrates this boundary, where a Cayman Islands liquidation was denied recognition because it was initiated to investigate fraud rather than for the collective satisfaction of creditors.

A significant barrier to recognition arises for judgments from jurisdictions lacking relevant agreements with the U.S., particularly Russia. The public policy exception (Section 1506), while applied very narrowly, becomes a formidable obstacle. The Florida case of *Zhanna Matsenko* (2025) exemplifies this, where a Russian bankruptcy judgment imposing subsidiary liability was refused recognition due to: the incompatibility of the Russian liability model with Florida's "piercing the corporate veil" doctrine (requiring proof of loss of corporate autonomy and direct causation); the creditor's failure to present a separate judicial order authorizing execution against foreign assets; and the absence of a mutual recognition treaty between Russia and the U.S., which, amid geopolitical tensions, renders recognition practically impossible. Thus, while Chapter 15 provides an effective mechanism for recognizing foreign insolvency proceedings through the established criteria of COMI and collective proceedings, recognition of judgments from countries like Russia remains extremely difficult due to differing legal doctrines and the operation of the public policy exception.

**Источники и литература**

- 1) Chapter 15: A More Efficient Path for Recognition of Foreign Judgments as Compared with Adjudicatory Comity // The National Law Review. 2025. URL: <https://natlawreview.com/article/chapter-15-more-efficient-path-recognition-foreign-judgments-compared-adjudicatory>.
- 2) Fink M.Z. Where is the COMI of a US Company? Considerations for Chapter 15 Recognition of Foreign Proceedings Involving US Companies // International Corporate Rescue. 2025. Vol. 22, Issue 6.
- 3) Petrov S. Bankrotnyy dayzhest za may: zarubezhnyye aktivy, indeksatsiya voznagrashdeniya [Bankruptcy Digest for May: Foreign Assets, Indexation of Remuneration] // Pravo.Ru. 2025. URL: <https://pravo.ru/story/258638/>
- 4) St. John's Law Scholarship Repository. Adjudicatory Comity as an Alternative to Recognition Under Chapter 15 of the Bankruptcy Code for Foreign Bankruptcy Proceedings. 2025. Research Memorandum.
- 5) U.S. Code. Title 11 — Bankruptcy. Chapter 15 — Ancillary and Other Cross-Border Cases. 2005.
- 6) Zone of Insolvency Blog. When Is a Cayman Islands Liquidation Not a Foreign Proceeding Under Chapter 15 Bankruptcy? 2026. URL: <https://zoneofinsolvencyblog.com/chapter-15-bankruptcy>.
- 7) Zweig S., Froh A., Atkinson J. Trends to Watch: Determining COMI in US Chapter 15 Proceedings // Bennett Jones Blog. 2025. URL: <https://www.bennettjones.com/Blogs-Section/Trend-Watch-Determining-COMI-in-US-Chapter-15-Proceedings>.