

# IMPACT OF RECENT CHANGES TO RUSSIAN INSOLVENCY LAW: THE U.S. PERSPECTIVE

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# AGENDA

1. Recent Changes to Russian Insolvency Law
2. U.S. Tools Available to Russian Trustees and Creditors
3. U.S. Case Studies
4. Strategy Options & Practical Considerations



# RECENT CHANGES TO RUSSIAN INSOLVENCY LAW

## Creditor-Friendly Amendments:

- Granted additional rights to creditors
- Expanded definition of “controlling person”
- Expanded scope of secondary liability
- Authorized individuals to file for bankruptcy (often involuntarily)



## Practical Impact:

- Strategic advantage to Russian creditors
- Increased risk of management/shareholder liability for insolvent company

## U.S. TOOLS AVAILABLE TO RUSSIAN TRUSTEES & CREDITORS

- Recognition of Russian Insolvency Proceedings under Chapter 15 of the U.S. Bankruptcy Code
- Recognition of Russian Judgments under Uniform Foreign Money-Judgments Recognition Act
- Federal Court Discovery under 28 U.S.C. § 1782
- Doctrine of International Comity



# CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

## Features:

- Enacted in 2005 based on UNCITRAL
- Substantial body of case law developed
- Russian insolvency cases have been recognized

## Purposes:

- Promotion of international judicial cooperation;
- Greater legal certainty for trade and investments;
- Promotion of fair and efficient administration of cross-border insolvencies;
- Protection and maximization of the value of foreign debtor's assets; and
- Protection of investment, preservation of employment, and facilitation of the rescue of financially troubled businesses.



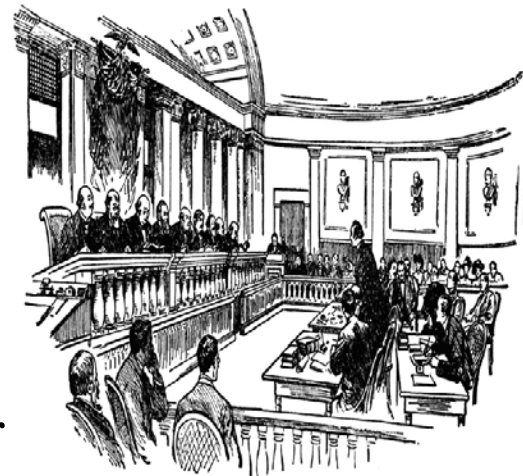
# CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

## Reasons to file:

- Give effect to a foreign plan of liquidation or reorganization;
- Operate debtor's business in the U.S.;
- Seek approval of a sale of debtor's assets; and/or
- Use U.S. courts to bring actions and seek discovery.

## Practical Considerations:

- “Single point of entry” for an authorized foreign representative
- Prerequisite to other relief for a foreign representative in the U.S.
- No provision for an individual foreign debtor to seek recognition



# CHAPTER 15 OF THE U.S. BANKRUPTCY CODE

## Eligibility:

1. Authorized foreign representative;
2. Main or non-main foreign proceeding; and
3. Evidentiary documentation.

➤ **2nd Circuit:** Property in the U.S.

## Public Policy Exception:

- *Manifestly* contrary to U.S. public policy
- Narrowly construed
- Exceptional circumstances



# UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

- U.S. courts traditionally recognize foreign judgments.

## Requirements: Foreign Judgment -

1. Grants or denies recovery of sum of money
2. Under the law of the governing country, it is:
  - final;
  - conclusive; and
  - enforceable (even though appeal is pending/available).

LITIGATION IN THE U.S.



- New York: No personal jurisdiction requirement over debtor.



# UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

## Mandatory Grounds for Non-Recognition:

- Foreign court system is not impartial;
- Foreign court lacked personal jurisdiction; or
- Foreign court lacked subject matter jurisdiction.

## Discretionary Grounds for Non-Recognition:

- Fraud;
- Public policy violation;
- Lack of due process;
- Judgment conflicts with another judgment; etc.

➤ **Tip:** No reciprocity requirement.



## FEDERAL COURT DISCOVERY UNDER 28 U.S.C. § 1782

- Third-party discovery related to a foreign proceeding
  - **Requirements:**
    - (1) Parties “present” in district;
    - (2) discovery is “for use” in a foreign proceeding; and
    - (3) plaintiff is an “interested person” in that case.

- **Discretionary Factors:**

- (1) Not against a party to other case;
- (2) foreign system receptive to assistance;
- (3) good faith; and
- (4) not unduly burdensome.



- **Tip:** applies to ongoing **or** contemplated foreign proceeding

## DOCTRINE OF INTERNATIONAL COMITY

- Generally, U.S. courts will recognize judgments rendered in foreign courts.
- **Exceptions:**
  - Recognizing foreign judgments is contrary to the public policy of the U.S.
  - Foreign judgment was rendered under corrupt or fraudulent judicial conditions.



## CASE STUDY #1: IN RE POYMANOV

### Key Features:

- Recognition of pending Russian insolvency proceeding
- Insufficient evidence of alleged “*reiderstvo*” (illegal corporate raiding)
- Debtor’s assignment of claims deemed null and void
- Automatic stay of pending litigation of the debtor’s claims



## CASE STUDY #1: IN RE POYMANOV

### Lessons Learned:

- No requirement for foreign trustee to be disinterested
- Legal retainer is enough to meet U.S. “debtor property” requirements
- Public policy exception is narrowly construed, and the party invoking the exception bears the heavy burden of proof
- U.S. Courts are likely to defer to foreign courts on any issue pending before the foreign court



## CASE STUDY #2: VTB BANK V. MAVLYANOV

### Key Features:

- NY Supreme Court granted recognition of two Russian money judgments
- Pending Russian insolvency proceeding had no bearing on U.S. recognition of Russian judgments



## CASE STUDY #2: VTB BANK V. MAVLYANOV

### Lessons Learned:

- Foreign judgments recognized in New York
- Burden of proof falls on party opposing recognition
- Debtor cannot stay U.S. recognition based on pending foreign insolvency action
- Only authorized foreign representative could seek Chapter 15 recognition and stay a U.S. litigation involving the debtor
- New York courts abide by “well-settled comity principles”
- U.S. courts not interested in the merits of underlying foreign judgment

LESSONS  
LEARNED



## STRATEGY OPTIONS & PRACTICAL CONSIDERATIONS

- Chapter 15 public policy exception requires robust evidentiary record.
- Foreign insolvency does not bar judgment enforcement in the U.S.

### Options for Creditors and/or Trustees:

- Recognition of Russian judgment
- Recognition of Russian bankruptcy proceeding
- Discovery



- **Tip:** Jurisdictional limitations of foreign bankruptcy trustees do not apply to creditors

### Opposition Considerations:

- Collect evidence to support public policy exception claims
- Assign legal claims to an entity before bankruptcy