Commercial Fraud/International

People and Assets on the Move Overseas: What You Need to Know to Hold Everything Still and Seize the Assets

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Seize the Assets

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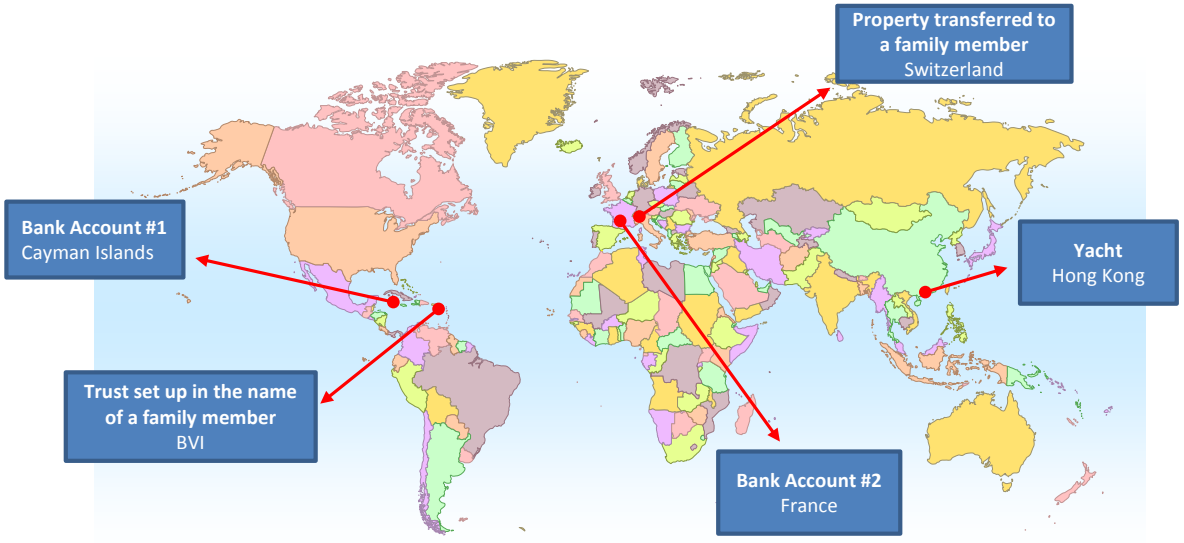
The Trustus Ponzi Scheme



1. Criminal proceedings in the U.S.
2. U.S. Securities and Exchange Commission action
3. Insolvency proceeding in the Bahamas
4. Potential parallel civil actions in other jurisdictions

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Asset Recovery: Investigation and Foreign Recognition

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I. Introduction

An asset investigation strategy will:

- Not just look for assets historically *owned* by the debtor (tracing forwards), but look for assets currently *used* for the benefit of the debtor (tracing backwards)
- Blend independent asset discovery with judicial discovery
- Be hidden from the debtor to the maximum extent possible

II. Where are the assets and the people?

For the purposes of this paper, certain facts are assumed from the Trustus scenario. Here, the bankruptcy trustee already knows that the Debtor has a yacht in Hong Kong and bank accounts in the Cayman Islands and France. However, it is rare for a creditor or trustee to be served with reliable, up-to-date information on the debtor's asset holdings on a silver platter. Typically the creditor/trustee will have to start from scratch.

A. Backward versus forward tracing

A common tactic in asset tracing is to look for assets historically known to have been owned by the debtor and to attempt to ascertain where those assets are today. This kind of tracing – starting in the past and trying to track its location and ownership to the present – is forward tracing. It often does not yield actionable results and takes an enormous amount of time and money. This is because the historical information on the asset when it used to be owned by the debtor is dated, and in the case of liquid assets, even a few days' transactions can alter the legal characteristic of the asset such that it is resistant to seizure. In addition, the process of tracing money passing through multiple jurisdictions requires several successive court applications that take many months and many dollars. By the time the creditor closes in on the "resting place" of the assets, the debtor has received notice of the forward-tracing efforts and can easily move or re-characterize the assets.

Forward tracing is a necessary evil, in that ultimately, the trustee/creditor needs to demonstrate that particular assets to be seized belong to the debtor, and linking assets to the debtor by their origin is a common method for doing so. However, relying primarily on forward tracing

can be counter-productive because even a few months of clumsy asset seizure litigation can rapidly educate the debtor as to how to structure his assets, which can lower the probability of recovery even further.

By contrast, backward tracing[1] involves looking at the debtor's patterns of consumption *today*, and tracing backward to find the source of assets used to fund that consumption. For example, if the debtor has paid for legal representation, backward tracing would be directed at finding the bank accounts from which the attorneys' retainer was paid. Other examples of present consumption from which to trace backwards might include utility bills or rent or mortgage obligations. Where did the funds servicing those obligations originate? This is the essence of backward tracing.

Tracing backward from points of present consumption carries several advantages.

First, there is strong evidence that the source of funds is beneficially owned by the debtor, regardless of in whose name such funds are held. After all, the funds are being used clearly to service an obligation of the debtor, and Courts will be inclined to conclude that the assets are in fact beneficially owned by the debtor regardless of the legal labels put on their ownership as an asset-protection measure.

Second, the creditor will have discovered assets that are beneficially owned by the debtor *now*, as opposed to collecting historical information and attempting to trace forward through a maze of subsequent transactions and transfers. There is an elegance to skipping the numerous intermediate shell companies and bogus transactions that a debtor has interposed at great expense and attacking the assets as presently held by the debtor. As noted above, even if such assets cannot be traced back to funds originally owned by the debtor, its present use for the debtor's benefit will provide a strong presumption in many jurisdictions that such assets are beneficially owned by the debtor.

B. Independent Asset Discovery versus Judicial Discovery

There are two main ways to obtain information about the debtor's assets: through informal investigation or through judicial discovery.

Informal investigation often starts with searching of public databases and records. There is a wealth of public information that can usefully collated and studied without the debtor acquiring notice. Most countries have registries of real estate, ships, and aircraft that can be searched publically. This an obvious place to start. Of course, the mere presence of personal property in a particular location does not mean title to it is registered there. The Trustus yacht, in this case, although physically present in Hong Kong, may actually be registered/flagged from another

[1] The term 'backward tracing' is simply meant to describe the direction of the investigation. It is not used in the sense recently propounded by the Privy Council (in an appeal from Jersey) in *The Federal Republic of Brazil v Durant International Corporation* [2015] UKPC 35. In that case, the court recognized that 'backward tracing' was possible in respect of assets purchased *before* tainted funds were deposited into a bank account. As the term was used by the Privy Council, it is only an extension of the normal process of equitable tracing *in rem* of particular assets. To illustrate: if a fraudster buys a car on credit and then repays the loan with stolen funds, the creditor can now seek recovery of the car, following the Privy Council's decision. Previously, the creditor could only trace forward to assets directly acquired with the stolen funds, i.e. after the tainted funds were deposited into the account from which the asset purchase was made.

jurisdiction, and may be owned by a company in yet another. (This may present seizure opportunities discussed below.) Company registries are less helpful, because in most jurisdictions, such registries provide little or no public information as to legal ownership or control of the company, much less beneficial ownership.

Other public records can be usefully scrutinized. Copies of court judgments – and to varying degrees, underlying court filings – are freely available in most jurisdictions. This can be useful for two reasons. First, an unsatisfied judgment debt in favor of the debtor is itself a receivable that be collected upon. Second, lawyers representing the debtor can often be identified from court records. In some jurisdictions, lawyers can be required to produce information on the source of funds used to settle their bills in the backward-tracing process described above.

Meanwhile, shipping records such as bills of lading can provide actionable clues as to the nature and owner of valuable cargo. The location of specific ships, and often aircraft, can also be tracked via web services. Such data can be useful not only to show the origin of specific cargo but also to know when that cargo, and indeed the vessel itself (if it can be seized), arrives in a creditor-friendly jurisdiction.

Judicial discovery presents a more direct and often more successful avenue to obtaining asset information than independent asset discovery. As it is normally conducted on notice, the trustee/creditor will have a strong interest in sealing the proceedings, seeking the court's approval to waive any notice requirements, and obtaining gag orders against third parties. The particular means of conducting discovery under seal and without notice will vary from jurisdiction to jurisdiction. In Commonwealth jurisdictions, for example, a gagging provision can be included within the body of a *Norwich Pharmacal* order.

Judicial discovery is particularly useful for obtaining bank account information, which the trustee (or other officeholder) sometimes cannot obtain directly from domestic banks, and likely will not be able to obtain directly from foreign banks either. It is, however, more cumbersome and more expensive. In any event, it is important to obtain it, because bank data can offer a wealth of leads to other assets, quite aside from any deposits held at the bank itself.

The precise methods and amounts of information available will vary from jurisdiction to jurisdiction. In France, for example, having obtained an exequatur order (discussed below), the creditor can apply to the Bailiff to search for bank accounts in the name of the debtor. Other civil law jurisdictions such as Switzerland[2] are much more restrictive and take a more robust approach to bank secrecy. In the U.K. and commonwealth jurisdictions, third party disclosure orders and *Bankers Trust* orders are available to reveal assets or trace particular funds. Additionally, the creditor can apply for *Norwich Pharmacal* orders ("NPOs") against third parties. Although NPOs are primarily aimed at identifying or completing a cause of action, they can yield information as to assets, for example, in respect of share ownership. That is one way to 'bust' an asset protection structure built on opaque offshore vehicles. For example, if the yacht in our Trustus scenarios is located in Hong Kong is owned by a Bermudan company "Invisible Yachts Limited", an NPO in Bermuda could potentially confirm the debtor is the owner of the shares in Invisible Yachts Limited, or that the debtor is a client instructing an offshore corporate services provider holding the shares as nominee, and thus the beneficial owner of the yacht. In fact, it is now quite common in the offshore jurisdictions for such orders to be made against trust companies and registered

[2] Article 47 of the Swiss Federal Act on Banks and Savings Banks.

agents, requiring them to reveal registers of shares and directors, and beneficial owners of companies where the shares are held by nominees. Pressure brought to bear by the Financial Advisory Task Force (FATF) has resulted in offshore jurisdictions legislating in recent years to increase transparency regarding beneficial ownership of companies.

Whether or not the insolvency originates in the United States, there are good reasons for officeholders to pursue discovery in the U.S. courts (either as part of the main bankruptcy proceedings or through 28 U.S.C. § 1782 discovery, which is the subject of other presentations). This is specifically in respect of *foreign* bank accounts maintained or utilized by the debtor, or third party clawback targets. That is so because most USD wire transfers are processed through correspondent banks in the United States. Subpoenas can be served in the U.S. on those correspondent banks for wire messages which will typically disclose (a) which bank the subject uses and often the account number as well and (b) will help the trustee/creditor "follow the money". This has obvious benefits in the asset recovery context.

As a foreign office-holder, a bankruptcy trustee (as in the Trustus scenario) may have further avenues of obtaining information that are specific to insolvency cases under the principle of modified universalism. However the scope of that principle, at least at common law, was curtailed by the Privy Council in *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36. This is discussed below in Section III.

C. Situs of the asset versus situs of the asset holding company

If the tracing efforts of the creditor/trustee are successful, he will have a clear picture of the location of the debtor's assets. However, if the asset has been structured to be held by an asset-holding company (usually incorporated in an offshore jurisdiction), there may be avenues to seize the asset in more than one jurisdiction. It is effectively in two places at once, because the shares of the asset holding company are themselves assets that could be frozen and seized in the jurisdiction of their legal situs. In effect, the creditor is using the debtor's own asset protection structure against him.

In the current Trustus scenario, by seizing control of the shares of the company holding the yacht, the creditor/trustee may come to own it without ever setting foot in Hong Kong. An *in personam* freezing order[3] might be obtained against Invisible Yachts Limited in Bermuda which restrains it from dealing with its own shares, and which further restrains it from dealing with its assets[4]. The freezing order can usually be accompanied by a discovery order requiring the respondent company to reveal the assets on which the freezing order bites[5].

D. People

[3] A freezing order against a third party is known as a *Chabra* injunction in England and many common law jurisdictions. This is discussed in greater detail in the accompanying presentations.

[4] For an example of such an order in the BVI, see e.g. *Natali Osetinskaya v Usilett Properties Inc.* (2013/037) (B.V.I. High Court) at para. 11.

[5] *A. J. Bekhor & Co. Ltd. v Bilton* [1981] 2 WLR 601.

There are at four common classes of people from whom the trustee or creditor could potentially recover damages or assets:

- Those who controlled the debtor company and/or its subsidiaries and affiliates, who are potentially liable to claims of mismanagement
- Those who received dividends or false profits, as owners.
- Third parties who hold the debtor's assets for the debtor's benefit
- Those who received cash or assets from the debtor company and/or its subsidiaries and affiliates, from whom gifts, unfair preferences, or fraudulent transfers (conveyances) may be clawed back. In our current Trustus scenario, we are aware that there are recipients of fraudulent transfers in the B.V.I. and Switzerland.

In the insolvency context, the trustee (or liquidator)'s access to the books and records of the debtor company will often allow him to ascertain the identities of its owners and directors without the need to engage in lengthy discovery procedures.

Identifying third parties holding assets on trust and/or third party recipients of cash transfers from the debtor is typically much harder to ascertain. Practically speaking, the most reliable way to identify third party targets susceptible to clawback claims is to 'follow the money'. Sometimes, bank statements provide clear identifying information as to the identity of recipients of outbound wire transfers. But often they do not, and more concerted efforts are required. This typically involves exercising subpoena power, and/or pursuing other avenues of judicial discovery domestically and abroad, to track transfers through routing banks and, if necessary, on to receiving banks. Subpoenaing correspondent banks in the U.S. for wire message data is thus a crucial element of the investigation. The fruits of that discovery are not only helpful from an informational perspective but will also form reliable evidence to submit in clawback proceedings.

Another avenue for information on people associated with the debtor is presented through "piggy backing" off regulatory and/or criminal investigations and proceedings. In the present scenario, there are SEC civil proceedings and DOJ criminal proceedings in train at the same time as the insolvency proceedings. The papers filed by the parties in these cases – available publically on PACER – can and should be scrutinized carefully for information about individuals against whom claims might be made or who may themselves be able to provide further actionable information to the trustee. The U.S. is somewhat different to other countries, such as England, the Cayman Islands, B.V.I., and Hong Kong, in this regard. In those jurisdictions, information on court proceedings and papers filed in court are much harder to access, there being no equivalent to PACER.

It should also be noted at this juncture that piggy backing works both ways: government agencies may themselves seek to obtain from the officeholder information gleaned during the course of insolvency proceedings. For example, in *In Re Arrows Ltd. (No. 4)* [1993] 3 WLR 513, the Serious Fraud Office in the U.K. sought transcripts of depositions taken by liquidators pursuant to their powers under the Insolvency Act 1986. The subjects of those depositions unsuccessfully argued that the depositions should be subject to statutory restrictions on being used in evidence in criminal proceedings, and were in any event privileged. The English Court of Appeal found that privilege did not apply and the civil courts had no power to prohibit the use of deposition transcripts taken by liquidators in criminal proceedings. Steyn L.J. noted there is an overriding

public interest in the free flow of information from official receivers and liquidators to prosecuting authorities about the commission of offences.

III. How do jurisdictions recognize the party seeking to recover?

The precise rules will differ from jurisdiction to jurisdiction. The UNCITRAL Model Law on Cross-Border Insolvency has only been implemented by 23 countries. Of relevance here, the U.S., the U.K. and B.V.I. have implemented the model law, but the Cayman Islands, Hong Kong, France, and Switzerland have not.

Generally, the English and common law jurisdictions (such as the Cayman Islands and Hong Kong) will allow for recognition under statute and at common law. However, the common-law position needs special explanation in light of two relatively recent decisions by the Privy Council and the Supreme Court in the U.K.: *Rubin v Eurofinance S.A.* [2012] UKSC 36 and *Singularis Holdings Limited v PriceWaterhouseCoopers* [2014] UKPC 46.

In *Rubin*, the Supreme Court held that the common law does not treat the enforcement of foreign judgments made in foreign insolvency proceedings – in particular judgments in clawback claims – any differently from foreign judgments in regular proceedings outside of insolvency. Their enforcement is the same at common law. Specifically, the requirement for personal jurisdiction to be established under the principles of the assisting court (in this case England, but it could be any other common law country) is not waived or obviated. In reaching this decision, the Rubin court found that the Privy Council's decision in *Cambridge Gas Transport Corp v Official Committee of Unsecured Creditors of Navigator Holdings Plc* [2006] UKPC 26 was wrongly decided. That is significant because *Cambridge Gas* was an important and highly authoritative decision confirming and applying the doctrine of modified universalism: i.e. that the courts of a country that is subject to a request for assistance should, so far as is consistent with justice and public policy, cooperate with the courts in the country of the principal liquidation to ensure that all the company's assets are distributed to its creditors under a single system of distribution. *Rubin*, however, did not extinguish the doctrine of modified universalism; it only found that there was no special regime for clawback judgments rendered in foreign insolvency proceedings and that on the facts in *Cambridge Gas*, the jurisdictional requirements for enforcement of a foreign clawback judgment at common law had not been met.

The effect of *Rubin* was considered by the Privy Council in *Singularis*, which is a decision in respect of Bermuda but is highly persuasive in England and Commonwealth jurisdictions. The Privy Council accepted that superior courts could grant foreign officeholders recognition at common law, applying the doctrine of modified universalism. Nothing in *Rubin* suggested otherwise; it was only concerned with the enforcement of judgments in insolvency proceedings. However, the scope of the powers accorded to the foreign officeholder at common law are very limited. In particular, the Privy Council held that recognition at common law did not entitle the foreign officeholder to exercise statutory powers that would be exercisable in a domestic insolvency "by analogy". Moreover, the foreign officeholder's powers could be no wider than his powers in the foreign main proceeding itself – that would allow and encourage forum shopping. Further, their exercise must be necessary and consistent with the substantive law and public policy of the assisting court. The last of these limitations means that where there is an existing scheme for the provision of information to the foreign office holder, that scheme is what should be used. The only common law power actually recognized in *Singularis* was one "to assist a foreign court

of insolvency jurisdiction by ordering the production of information in oral or documentary form which is necessary for the administration of a foreign winding up".

The *Singularis* decision has particular resonance in the B.V.I. because, as the law currently stands, foreign proceedings can only be recognized at common law. Although the B.V.I. has adopted the UNCITRAL Model Law, it has not actually bought into force the sections permitting full-blown recognition of foreign proceedings. (It has, however, brought into force the sections dealing with ad hoc assistance to a foreign officeholder[6].) Consequently, there is a limited statutory basis to for the B.V.I. court to assist in foreign proceedings. In its written rulings, the B.V.I. court has found it is limited to making orders to preserve the integrity of the foreign proceedings; it cannot give the foreign office holder the same wide-ranging rights and powers as a domestic office holder in a B.V.I. insolvency proceeding (*In Re C (a Bankrupt)* 0080/2013 (B.V.I. High Court).

How does this apply to the fraudulent transfer defendant in the B.V.I. in the Trustus example? As noted above, the trustee cannot avail himself of causes of action in the B.V.I. particular to insolvency (such as unfair preferences), because he cannot obtain recognition in the B.V.I. at common law or statute allowing him to exercise domestic insolvency powers. He must look to more creative ways to attack the transfer. The trustee could obtain a judgment in the U.S. courts and seek to enforce that judgment at common law in the B.V.I. However, there are potentially two problems with this approach: only money judgments are enforceable at common law[7] (so a judgment voiding a particular transaction is not enforceable unless it results in damages or restitution); and the trustee may have difficulty establishing personal jurisdiction over the B.V.I. respondent, bearing in mind that personal jurisdiction, when it comes to enforcement of a foreign judgment in B.V.I., must be established under B.V.I. principles. In the absence of formal recognition, the best course is probably for the Trustus trustee to initiate a fraudulent conveyance claim in the B.V.I. itself under section 81 of the Law of Property and Conveyancing Act 1961. There is no need for a prior recognition order to bring such a claim. If successful, the B.V.I. Court would unwind the impugned transaction and the judgment is enforceable enforced directly in the B.V.I., it being a domestic judgment.

Switzerland has not adopted the UNCITRAL Model Law. Foreign proceedings can be recognized under the Private International Law Act 1987 ("PILA"). There are some preconditions for recognition, such as: that the foreign court must have had jurisdiction over the debtor, that minimum standards of due process were followed, and that there has been no violation of Swiss public policy. The precise approach to a foreign insolvency in Switzerland will depend on the domicile of creditors and the debtor's connections to Switzerland. If the debtor simply has assets in Switzerland, those assets will not immediately be available to foreign creditors' claims. Instead they will be dealt under the Swiss insolvency law (the Debt Collection and Bankruptcy Act of 1889 or "DBCA") in what is known as a mini-bankruptcy. The Swiss schedule of claims will include only secured creditors and privileged unsecured creditors domiciled in Switzerland. Once

[6] Part XVII of the Insolvency Act 2003, which currently applies to foreign proceedings in Australia, Canada, Finland, Hong Kong, Japan, Jersey, New Zealand, the U.K., and the U.S.. Section 467 allows the B.V.I. court to (*inter alia*) issue anti-suit injunctions, restrain enforcement against the debtor's property, require delivery up of proceeds of the debtor's property, appoint an interim receiver, or authorize a deposition of the debtor.

[7] The foreign judgment is treated as creating a debt which can be sued on in the enforcing court, usually via summary judgment procedures.

these claims have been satisfied, the residue of the Swiss estate will normally be transferred to the main estate for distribution in the foreign proceedings. If the foreign debtor has a Swiss branch of its business, the position is slightly different under the PILA and DBCA. In that case, foreign creditors with claims directly against the Swiss branch may have their claims enforced in Switzerland in what is known as a "branch bankruptcy." Finally, specific obligations may be dealt with under Swiss law if a foreign debtor has elected "special domicile" in Switzerland with respect to that specific obligation.

In respect of the fraudulent transferee in Switzerland, the Trustus trustee will either need to enforce a U.S. judgment against the recipient in Switzerland, or seek recognition in Switzerland and pursue a clawback claim in the Swiss courts[8].

In France, foreign insolvencies originating outside the EU (as in the Trustus example) are subject to the French general rules of recognition of foreign orders and judgments. The foreign bankruptcy order would have no effect until the interested party (here the Trustee) is granted an exequatur order by a French court recognizing the foreign order triggering bankruptcy proceedings. On recognition, the foreign insolvency rules apply, with the company's assets and liabilities determined according to that law. Thus transactions that may be impeached under U.S. law in the Trustus case would also be impeachable in France, and the trustee may collect on French assets (such as the French bank account) as he could in the U.S.

IV. Use of foreign insolvency proceedings

Whether to initiate foreign insolvency proceedings in parallel to the domestic proceedings is a question specific to each individual case. Because duplicative proceedings can be time-consuming, legally cumbersome, and expensive, they are often best avoided. But this is by no means a hard rule. Foreign insolvency proceedings may carry clear advantages as well.

Suppose, for example, the trustee in the U.S. obtains judgment against a third party company in the B.V.I. for a fraudulent transfer (as per the Trustus scenario). That third party company obfuscates, delays, or otherwise refuses to cooperate in returning the funds or assets on which the judgment bites. Placing it into involuntary insolvency in the B.V.I. would give the trustee real leverage in obtaining a favorable settlement, if not outright payment of the judgment debt. Moreover, if the fraudulent transferee is closely connected to the debtor, it may put further pressure on the debtor to pony up further assets in the main proceedings.

If, however, the third party company still refuse to cooperate, its liquidators can collect its assets and initiate clawback proceedings to unwind the individual transfers depleting its assets. The net result is that the third party company, now in liquidation, will have a greater asset pool from which to satisfy the original debtor's judgment against it than if no winding up had occurred.

Sometimes, parallel proceedings are necessary simply because assets are located abroad that the U.S. courts cannot reach. The creditor is in effect leveraging the foreign insolvency law to collect a larger 'pot' of assets that otherwise could not be seized. For example, the need for a mini-bankruptcy in Switzerland when the debtor holds assets there has been discussed above. Similarly, the common law in England developed so that where there are assets in England, the court (in this case the Chancery Division of the High Court) may establish a parallel English winding up of the

[8] Swiss law recognizes fraudulent conveyance claims.

foreign company. This ancillary liquidation, as it is known, is confined purely to collecting and distributing English assets with as much conformity as possible to the principal foreign proceedings; it had no extra-territorial effect. But it is still a parallel proceeding to the main insolvency in the jurisdiction of incorporation. An overview of this feature of English insolvency law is contained in the judgment of Lord Sumption in *Singularis*.

Against this must be weighed the expense and unwieldiness of conducting duplicative proceedings. The decision of whether to pursue such proceedings is ultimately a commercial one for the trustee/creditor in the principal jurisdiction.

Foreign Evidence Gathering and Asset Seizure

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I. Introduction

The global nature of today's economy makes the process of recovering the assets all the more difficult. The legal benefits provided by different jurisdictions are often used illegitimately by individuals to hide the proceeds of their activities, making it more difficult for the victims to recover their assets.

A recovery strategy must:

- Not rush to file suit or obtain judgment. Claims are flexible. Judgments may restrict your recovery efforts because in foreign jurisdictions they may be more strictly construed and inhibit one from expanding the recovery effort.

- Not solely focus on tracing assets. The assets of those complicit in the illegal activities should also be tracked. You are not limited to only recover improperly procured assets.

- Focus on evidence gathering. The key to recovery is through supportable, verifiable evidence.

- Not depend on the cooperation of the opponent. The goals of opponents are delay and deception. Never expect full and complete honesty.

- Seek to locate, freeze and seize assets. Once assets are frozen, the cooperation of the fraudsters is certainly more easily procured.

An effective strategy identifies the jurisdictions involved, the targets of recovery, the evidence gathering needed, and how different countries' laws interact.

II. Evidence Gathering

A. Hague Convention

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (For signature, March 18, 1970, 23 U.S.T. 2555) provides detailed methods for foreign discovery of witnesses and documents. Although about 40 countries are parties to the convention, including the United Kingdom and European countries, it has not been adopted by most of the tax havens (*U.S. Department of State, Treaties in Force 2006*, [visited May 21, 2006] www.state.gov/documents/organization/65524.pdf).

The Letter of Request Procedure is the main means of evidence gathering under the Hague Convention. This process begins with a request made to the domestic court where the action is pending to issue a letter of request seeking the production of specified documents or the taking of testimony from a particular witness (23 U.S.T. 2557-58). The court transmits the letter of request to the Central Authority, a governmental agency responsible for receiving and overseeing execution of letters of request, which then transmits the letter of request to the court in the jurisdiction where the evidence is located. The foreign court then conducts an evidentiary proceeding and sends the results directly back to the court that issued the letter of request (Id. at 2560-63). The drawback is this procedure is time-consuming and may not guarantee that the requested discovery will be obtained.

In becoming signatories to the Hague Convention, the U.S., Czechoslovakia, Barbados and Israel are the only nations that have not limited pre-trial discovery in some fashion under the letter of request process (*Brewer, D., Obtaining Discovery Abroad, 22 Houston J. Int'l* 525, 532 [Spring 2000]). Spain, Italy, Germany, Greece, Portugal, Australia, and Argentina will not execute such letters of request. France, India, China and the United Kingdom will only execute letters of request where documents are specifically enumerated in the letters.

The Hague Convention was not intended to replace Letters Rogatory or other methods of obtaining evidence located abroad (*Societe Nationale Industrielle Aerospatiale v. United States Court for the Southern District of Iowa*,

482 U.S. 522, 538 [1987]). It was intended to supplement other means. As such, the Hague Convention is not exclusive or mandatory under circumstances where a court has jurisdiction over the foreign entity (*Id*. *See also In re Flag Telecom Holdings Ltd. Sec. Litig*., 2006 U.S. Dist. Lexis 22528 [S.D.N.Y. 2006] [discovery demand under rule 34 is proper when served on party for documents within their control, regardless of where documents are located]).

B. Inter-American Convention

The Inter-American Convention or Letters Rogatory and its additonal protocol regulates the procedure by which a member state issues Letters Rogatory to another. Inter-American Convention of Letters Rogatory, Jan. 30, 1975, 14 I.L.M. 339, reprinted following 28 U.S.C. § 1781; Additional Protocol to the Inter-American Convention on Letters Rogatory with Annex, May 9, 1979, 19 I.L.M. 1238, reprinted following 28 U.S.C. § 1781. The Inter-American Convention only applies to Civil and Commercial cases. It applies only to evidence-taking by Letters Rogatory. 14 I.L.M. 339 at Art. 2. Currently, there are 17 states that have ratified the Inter-American Convention and additional protocol. *Id*. The United States submitted a reservation stating that the Inter-America Convention is only applicable to states that have signed the Convention and the protocol. *Id*.

The foreign country ultimately decides whether to honor and execute the letter of request. Many countries not party to the Convention, such as Canada, routinely execute letters of request for United States courts. When the deponent is willing to give evidence, the parties may use the "notice" or "commission" methods of Federal Rule 28(b)(3) and (4), respectively, if not prohibited by foreign law.

C. Section 1783 – Subpoena Abroad

Section 1783 authorizes the issuance of a subpoena for testimony of or production of documents by an American Citizen residing outside of the United States when such an issuance is in the "interests of justice." 28 U.S.C. § 1783(a). Consequently, a U.S. citizen can be subpoenaed to testify regardless of whether the Court has jurisdiction over a party to the U.S. lawsuit. *Blackmer v. United States*, 284 U.S. 421, 438 (1932) ("The jurisdiction of the United States over its asset citizen…is a jurisdiction in person, or, as he [or she] is personally bound to

take notice of the laws that are applicable to him and to okay them."). In the "interests of justice" has been interpreted to mean a "compelling reason" to provide testimony. *Id*. Courts have construed a "compelling reason" to include the circumstances of the case, the posture of the case when the issue arises and the underlying theory of federal pre-trial discovery to promote full and fair litigation. *Estate of Yaron Ungar v. Palestinian Auth*., 412 F. Supp. 2d 328 (S.D.N.Y. 2006); *Klesch & Co. Ltd. v. Liberty Media Corp*., 217 F.R.D. 517 (D. Colo. 2003).

However, approximately 15 countries, such as France, Switzerland, and Luxembourg, have enacted blocking statutes or adopted measures to prevent the extraterritorial application of U.S. discovery procedures against foreign persons. Blocking statutes act to prohibit persons within the enacting state from supplying evidence pursuant to discovery requests. They usually carry some form of penal sanctions for those who violate the prohibition. Blocking statutes fall into three categories:

a. Procedural blocking statutes prohibit compliance with foreign discovery requests unless certain procedures are followed;

b. Discretionary blocking statutes vest government agencies with discretion to prohibit compliance; and

c. Industrial blocking statutes place limitation on the provision of evidence to specific industries.

The statutes' purpose is to promote the case of international treaties and agreements. In practice, they are often used to thwart the efforts of a U.S. bankruptcy trustee or private litigants in favor of local citizens. Hence, blocking statutes can limit the evidence a U.S. bankruptcy trustee can gather.

The U.S. Supreme Court has addressed the impact of blocking statutes on U.S. based-discovery. The Court stated that non-compliance still constitutes non-production and can subject a person to discovery sanctions, but that dismissal is an inappropriate sanction "when it has been established that failure to comply has been due to inability, and not to willfulness, bad faith or any fault of [the

party]." *Societe Internationale Pour Participations Industrielles Et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 212 (1958).

To avoid sanctions, a party relying on a blocking statute must show it presents a true obstacle to compliance. *In re Air Crash at Taipei*, 211 F.R.D. 374, 377 (C.D. Cal. 2002). But, a foreign blocking statute will not defeat use of the Federal Rules; a defendant must point to specific sovereign interests that will be furthered by applying the Hague Convention.

Subsequently, the U.S. Supreme Court discussed the difficulties when discovery seeks information located in a jurisdiction whose laws prohibit their disclosure. The Court held that "blocking statutes do not deprive an American Court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate the statute." *Aerospatiale*, 482 U.S. at 544 n. 29.

D. Mutual Legal Assistant Treaty

A Mutual Legal Assistant Treaty is a treaty which creates a binding obligation on treaty partners to give assistance to each other in criminal investigations including fraud and certain civil and administrative matters. *Treaty on Mutual Legal Assistance in Criminal Matters*, May 6, 1991, U.S.-Uru. Ch 1, at. 1 Treaty Doc. No. 102-119. The treaty typically provides for a direct exchange of information between two "central authorities" – the U.S. Department of Justice and its foreign counterpart, bypassing the involvement of a U.S. court, but not necessarily a foreign court. *James I.K. Knapp, Mutual Legal Assistant Treaties as a Way to Pierce Bank Secrecy*, 20 Case W. Res. J. Int'l L. 405, 405 (1988).

The treaty contractually obligates signing countries to provide each other with forms of assistance needed in criminal cases, while streamlining and enhancing the effectiveness of the process for obtaining needed evidence. *In re Commissioner's Subpoenas*, 325 F. 3d 1287, 1290 (11th Cir. 2003), overruled on other grounds by Intel Corp., 542 U.S. 241 (2004). Legal assistance covers the freezing of assets, the summoning of witnesses, the taking of testimony, the compelling the production of documents and other evidence, the issuance of search warrants and the service of process." *Id*. at 1290, n. 1.

The United States has entered into these treaties with more than 45 countries, including many islands in the Caribbean and countries on 5 continents, to facilitate the investigation and prosecution of criminal matters. *Knapp*, *supra* at 412-17.

Notwithstanding the effectiveness of the Mutual Legal Assistance Treaties, they are intended solely for mutual legal assistance between the governments of the two signing countries. The powers and remedies offered pursuant to treaties are not available to private persons or corporations, but rather to the prosecutors. *Id*.

However, under the Patriot Act, 18 U.S.C. § 1956, a District Court may appoint a federal receiver who shall have standing to pursue MLAT requests for private parties.

E. Foreign Pre-Action Discovery Proceedings

1. Common Law

(a) *Norwich Pharmacal*

To discover otherwise private or protected information, English law offers a remedy based on the case of *Norwich Pharmacal Company v. Commissioner of Custom and Excise*. 3 W.L.R. 164 (H.R. 1973), 2 All E.R. 943 (H.L. 1973).

Norwich Pharmacal relief does not create rights in property, but is a means to discover the existence of assets and other important recovery information. The decision was based on the general proposition that a party who becomes involved in potentially actionable conduct of another is under a duty to disclose information to those who have legitimate rights to inquiry. The circumstances for Norwich Pharmacal usage are wide. As such, the (usually innocent) party holding the information comes under a duty to give the victim and the court information in order to disclose their identity of the wrongdoers, the nature and content of the transactions, the location of assets, etc.

Norwich Pharmacal relief has resulted in discovering bank account information, correspondence, checks, internal memoranda, debit vouchers, *Bankers Trust Co. v. Shapira*, 1 W.L.R. 1274 (1980), 3 All. A.R. 343 (1980); *Arab Monetary Fund v. Hashim*, 2 ALL E.R. 911 (1992), particulars about companies and trusts formed by a spouse, credit accounts, real estate properties, automobiles, *Mercantile Group (Europe) A.G. v. Aigela*, 3 W.L.R. 1116 (1993), 1 All A.R. 110 (1994), tax returns, *M.N.R. v. Huron Steel Fabricators, Ltd*., 41 D.L.R. 3d 407 (1973) and corporate books and records. *Canadian Javelin, Ltd. v. Sparling, et al*., 59 C.P.R. 2d 146 (1978).

To get an order one must establish that: (1) the wrong was actually carried out by the ultimate wrongdoer; (2) there is a need for an order to enable an action to be brought against the wrongdoer; and (3) the respondent had facilitated the wrongdoer and is not a mere witness, and is able to provide information necessary to enable the wrongdoer to be sued. *Mitsui and Co. v. Nexen Petroleum (U.K.) Ltd*., [2005] 2 All E.R. 511; *BNP Paribas v. TH Global Ltd. and Others* (2009) EWHC 37 (CH).

The claimant need not be intending to bring legal proceedings against the wrongdoer. *Ashworth Hospital Authority v. MGN Ltd*. (2002) 4 ARER 193. The order also can be made in aid of foreign proceedings. *Smith-Kline and French Laboratories v. Global Pharmaceuticals Ltd.* (1986) RPC 394; *Manufacturer's Life v. Harvest Hero* (2002) 1 HKLRD 828.

(b) *Other Information Orders – Banker's Trust (Cayman Islands)*

Cayman Island courts recognize a broader form of Norwich Pharmacal relief – so-called "Bankers Trust" relief (from the seminal decision of the English Court of Appeals in *Bankers Trust Co. v. Shapira*, [1980] 11 W.L.R. 1274), that can be used to trace, recover, and preserve assets to which a creditor has a proprietary claim.

Banker's Trust relief can be obtained by demonstrating a strong *prima facie* case of fraud or breach of trust, and that the target of the relief facilitated the wrongdoing in some way. Application is made without notice, and is generally sought against parties who owe a fiduciary duty to the alleged fraudster.

Norwich Pharmacal and Banker's Trust orders have both been recognized by the BVI courts. Bankers and registered agents of BVI companies tend to be the targets of such relief. BVI courts will also require a showing that: (i) the party possessing the information has innocently become involved in the infringement of the applicant's rights; (ii) the third party has relevant information; (iii) the applicant has a *prima facie* case against a wrongdoer whose identity could not be ascertained without the information sought; (iv) the information is not otherwise available; and (v) the applicant can and will pay for the third party's costs. Often this relief is sought in conjunction with a gag order.

2. Civil Law

(a) *Switzerland*

In Switzerland, Art. 73 of the Swiss Criminal Code allows a victim who suffers material damage from a crime that is not reinsured by insurance to claim the amounts attached by the criminal authorities and originally belonged to the accused person in order to cover his civil claims. For instance, an accountant diverted funds belonging to his employers and used a portion of the funds to purchase a house across the border in France. A criminal complaint was brought, and as a result, the investigating criminal judge issued letters rogatory to discover and attach the bank accounts to the surplus of the sale of the house in France.

Criminal procedures prevail over civil matters. An investigating judge will seize assets, and hence, the criminal seizure of assets makes discovery possible.

A Swiss criminal investigating judge has the following benefits or advantages:

- Financial institutions may not oppose criminal inquiries for reasons of bank secrecy; they must proceed with the blocking of accounts and all assets pending a judicial decision voiding the seizure of the assets.

- Any money transfers in European countries and America are subject to prevention of money laundering legislation, which forces financial institutions, banks, insurance companies, postal offices, etc. to keep records including the identities of the sender and the beneficiary of the transfer, resulting in a paper trail that is accessible to criminal inquiries, but not to civil judges.

- Seizure of assets is immediate in criminal matters and easy to formulate; general clauses such as the one below are effective to attach assets:

> All cash, values, titles, credits and other assets on account, in a deposit or safe, under proper name, convention or numeral designation, pertaining to Mrs….as well as all assets of trust instituted by…or of which he/she is beneficial owner or protector or otherwise entitled, or on which he/she can have, under the terms of a power of attorney or a letter of instruction or any other connected instrument with one "Letter of Wishes" with [financial institution]…in…[location].

- Cooperation and judicial assistance in civil matters according to the Hague Convention or the Lugano or Brussels Conventions in Europe is lengthy, complicated, and in some countries, not easily granted – and more often not granted within a useful

timeframe for the seizure of assets. This is the case in countries in which courts are notoriously overloaded, such as Portugal.

- No cost is involved for the plaintiff in a criminal investigation, except for counsel; the investigating judge will proceed without court costs. In civil matters, the courts will ask for coverage of court expenses, translation costs, notification costs, etc.

Therefore, even though a criminal proceeding is not an easy instrument to handle because control of the proceeding and all inquiries are in the hands of the investigating authorities, it should be seriously considered where the case against the defendant contains criminal elements.

(b) *Panama*

In Panama, one can obtain ex parte records through a procedure called "Judicial Inspection" (Article 59 of the Judicial Code). This procedure requires the appointment of an expert and a bond of $1,000. By following this process, a court will lift the veil of bank secrecy.

F. Search & Seizure

Anton Piller K.G. v. Manufacturing Processes [1976] 2 W.L.R. 162, allows for limited discovery prior to commencement of an action. The party who is a beneficiary of an Anton Piller order has the right to seize and secure evidence on certain terms. The evidence is held so that the process of the court is not rendered useless.

To obtain an Anton Piller order, the victim must show that he or she had a business relationship with the defendant, and that the defendant is likely to be in possession of documents that can help prove the claim, such as bank account statements, letters to and from the victim, and internal memos. The Anton Piller order permits a party's representative to enter

upon premises and in certain circumstances to catalog documentary and other evidence that may exist.

The requirements for pleading and obtaining an Anton Piller order are simple, yet not easily achieved. The applicant must be able to plead an extremely strong *prima facie* case. The potential or actual damage must be demonstrably serious. The respondents to the Anton Piller application must have in their possession or control evidence that inculpates them or otherwise demonstrates or tends to demonstrate their responsibility in connection with the underlying claim, and further that those parties may destroy that evidence before the relevant discovery process can be pursed and completed. Finally, the applicant must show that the harm likely to be caused by the execution of the Anton Piller order will not be excessive or out of proportion to the legitimate object of the order.

The grant of an Anton Piller order is usually done *ex parte* and is made before the target of the order has an opportunity to be heard. In essence, to obtain an Anton Piller order, the matter needs to be replete with bad dealing and dishonesty on the part of the target. There needs to be strong evidence showing a real possibility that the defendant will destroy documents.

III. Freezing Orders

A. *Mareva* Injunction

Once assets are discovered, efforts must be focused on freezing and seizing them. Through relief known as a *Mareva* injunction, *Mareva Compania Naviera SA v. International Bulk Carriers, SA*, 1 All E.R. 213 (1980), forcing courts have issued injunctions to freeze assets in the possession of third parties in foreign countries.

A *Mareva* injunction "enables the seizure of assets so as to preserve them for the benefit of the creditor, but not to give a charge in favor of any particular creditor." *Z Ltd. v. A-Z and AA-LL*, 1 Q.B. 558, 573 (1982).

To obtain a *Mareva* injunction, the applicant must show a good arguable case and serious risk that the respondent will either remove the assets from the jurisdiction or dissipate them so as to frustrate any judgment ultimately obtained. To protect the interests of all parties involved, an applicant must serve the order expeditiously, abide by any subsequent order of the court regarding liability to the respondent in damages and indemnify third parties against expense incurred as a result of the order. *See Michael Andrew Skene, Commercial Litigation Beyond the Pale*, 301 U.B.C.L. Rev. 1, 28 (1996).

B. Statutory Freezing Orders

In some countries, freezing orders are allowed by statute.

1. Argentina

In Argentina, pre-emptive measures are allowed under federal and provincial law. In addition to attachment orders and injunctive relief, courts have allowed Anton Piller-type orders to seize evidence to preserve it. All of these measures are available at a third party's premises.

2. Austria

The Austrian Code of Enforcement (*Exekutionsordnung*) allows a party, both before and during an action, to obtain a preliminary injunction to preserve a defendant's assets (*Austrian Enforcement Act*, § 739, *et seq*.). The law delineates among three types of preliminary injunctions: (i) preliminary injunctions for the protection of money claims; (ii) preliminary injunctions for the protection of other claims; and (iii) special preliminary injunctions for the protection of other rights. A preliminary injunction to secure monetary claims can be obtained by showing "subjective endangerment," that is, a probability that the defendant will take steps to hinder the enforcement of a court order by, for example, moving assets abroad. Preliminary injunctions to secure other claims are used to protect the future enforcement of claims for performing specific acts, by way of preserving the object in the dispute. Special

preliminary injunctions for the protection of other rights involve foreseeable violence or an imminent irreparable damage, and can be used to regulate a host of *ad interim* disputes relating to property or other rights.

Where the wrongdoer has also committed a criminal defense, the public prosecutor may order the temporary securing (*Sicherstellung*) of assets for the sole purpose of securing the victim's civil claims.

3. France

In France, the freezing remedy requires an order, which can be obtained without notice to the debtor. To do so, the creditor must provide *prima facie* evidence of the existence of a claim (Law 91-650 of 9 July 1991, Article 67). Courts often scrutinize this condition. The creditor must also show the existence of a threat to its ability to recover a claim against the debtor. Courts accept objective proof such as bank account statements demonstrating that the debtor has financial difficulties, and subjective proof such as a debtor's behavior in failing to respond to demand letters.

A creditor can freeze a wide range of assets: bank accounts, real property, stock, claims to a third-party's assets, and payment streams (such as ongoing rents). It is imperative to precisely and specifically identify the assets as being frozen.

Creditors then have three months to effectuate the freezing order (Decree 92-755 of 31 July 1992, Article 214). In most cases, a bailiff executes the order. For real property, a form is recorded against the property.

The debtor is informed of the freezing order only after the order's execution. The debtor has the right to contest the order before the judge who entered it, and if that fails, the debtor can appeal. However, in most cases, unless the creditor gave wrong

information in the application, the appeal will be denied (*Id*., Article 215).

The creditor also must bring an action against the debtor within one month of execution of the order. Significantly, that action can be commenced in a foreign court or in arbitration. Once a judgment is obtained and all possible appeals need not be exhausted, a creditor can take possession of the assets. How that is accomplished depends on the asset.

4. Panama

Upon proof of assets having been transferred to a Panamanian party, one can file an asset-freeze action. The statute of limitations for tort actions in Panama is only one year, but Panama does have a "discovery rule" that allows for extending the limitation period.

To freeze assets, a bond of 20-30 percent of the amount to be frozen is required. If assets are frozen, Panama requires a lawsuit to recover the funds to be filed within the six days of the freeze.

5. Hong Kong

Section 21M HCO provides that a foreign plaintiff may apply for interim relief even if there is no claim for substantive relief in Hong Kong. Foreign plaintiffs must show good cause for such interim relief and the foreign proceedings must be capable of giving rise to a judgment which may be enforced in Hong Kong, which, as a general rule, must be a final and conclusive monetary judgment.

6. Italy

In Italy, Article 671 of the Italian Civil Code permits a precautionary seizure of property if a creditor has a "valid fear of losing the security for his claim." The order will prohibit the debtor from disposing of all his assets and not just specifically identified ones. A freezing order can be granted if: 1) the Court is persuaded

that the claim has a *prima facie* basis based on the documentary evidence presented, and 2) the Court is persuaded that should the measure be denied the time necessary to obtain a judgment on the merits may prejudice the right of the claimant. Based on case law, the Court must also be persuaded that the claim will be confirmed or ascertained in further legal proceedings on the merits and that the risk of prejudice is imminent (or had already started to produce its effects) and irreparable (the prejudice is unlikely to be remedied and/or recovered).

After submission of the application, a hearing will be scheduled where the court will render a ruling. No discussion on the merits of the case is allowed. The court can grant urgent interim relief if the timing of the hearing might cause some prejudice to the claimant. The interim relief is entered *ex parte* and will set a hearing 15 days later whereat the court can confirm, revoke or amend the interim decision.

The decision can be appealed within 15 days and the appeal decision will be taken within 20 days of the submission. The appeal does not suspend enforceability unless the appellate court decides, due to reasons which have arisen since the interim order. The appeal decision is not subject to further appeal.

The court granting relief may also impose upon the claimant putting up security to protect the debtor in case the freezing order is later revoked or the merits of the case are decided in the debtor's favor.

The freezing order must be executed within 30 days from the granting. If execution is not started within that timeframe, the freezing order ceases to be effective. The freezing order will also cease to exist if the legal proceeding on the merits is not started within 60 days from the granting.

C. *Chabra* relief

Subsequent jurisprudence (*T.S.B. Private Bank International SK v. Webra* [1991] 1 W.L.R. 231) has extended the reach of freezing orders to third parties against whom there is no substantive cause of action, but where there is good reason to suppose that their assets may in truth be the assets of the defendant against whom a cause of action is asserted. This type of order is known as *Chabra* relief, and has been described as possessing certain characteristics.

1. It may be exercised where there is good reason to suppose that assets held in the name of a defendant against whom the claimant asserts no cause of action (the NCAD) would be amenable to some process, ultimately enforceable by the courts, by which the assets would be available to satisfy a judgment against a defendant whom the claimant asserts to be liable upon his substantive claim (the CAD).

2. The test of "good reason to suppose" is that of a good arguable case.

3. The jurisdiction will be exercised where it is just and convenient to do so.

4. Assets will be treated as in truth the assets of the CAD if they are held as nominee or trustee for it as the ultimate beneficial owner.

5. Substantial control by the CAD over the assets in the name of the NCAD is often a relevant consideration, but substantial control is not the test for the existence and exercise of the *Chabra* jurisdiction. It is relevant where there is a question of beneficial ownership, and where there is a real risk that assets may be dissipated in the absence of a freezing order.

See: PJSC Vseukrainsky Aktsionernyl Bank v. Maksimov and Ors, (2013) EWHC 492 (Comm).

D. Worldwide Injunctions

Following a line of cases decided in the late 1980s and early 1990s, the English courts have jurisdiction to prevent untrustworthy defendants from dissipating or dealing with their assets located anywhere in the world (Babanaft International Co. SA v. Bassatne [1990] Ch. 13; Haiti v. Duvalier (No. 2) [1990] 1 Q.B. 202; Derby & Co. Ltd. v. Weldon (No. 1) [1990] Ch. 48, (Nos. 3 and 4) [1990] Ch. 65).

The scope of such injunctions has been clarified recently. For instance, in *JSC Mezhdunarodny Promyshlenncz Bank and another v. Pugachev and others* (2015) EWCA Civ. 906, the English Court of Appeal extending the freezing injunction to prevent trusts being used to assist international fraud. In *Contour Litigation SPC (in liquidation) v. Terrill* (2015) EWHC 3240 (Ch)., the English High Court granted an injunction despite the delay of more than one year between the discovery of suspicious transactions and a letter of request applying for a freezing order sent by the Cayman court to the English court. There, the Court found the delay was justified because the whereabouts of the fraudster were unknown until he was identified in England and the joint official liquidators were obligated to seek legal advice, permission of the creditors' committees and the assistance of the Cayman court before writing to the English court for assistance. Finally, in a recent unreported decision, *ENRC NV v. Zamin Ferrous Limited* (2015) JRC 217, the Jersey Royal Court demonstrated its consent to ensuring that judgment creditors can enforce their judgments worldwide. In this case, the judgment creditor applied for an *ex parte* order to freeze assets and to compel the judgment debtor to answer questions about its assets and assets held by its subsidiaries. The answers revealed two agreements had been entered into pursuant to which certain assets held by subsidiaries had been transferred to third parties.

The Royal Court reasoned it had "wide discretion" to order further disclosure about the agreements for the purpose of policing the freezing order and to ensure "that the judgment creditor has all the information he needs to execute the judgment anywhere in the world." The key principle to the court was that in post-judgment proceedings, once a judgment is entered, the Court has free-standing jurisdiction, independent of the freezing order jurisdiction, to order disclosures in aid of the enforcement. As to the scope of the order requiring disclosure of assets of the subsidiaries, the Court decided that "it must be

information as to assets within a corporate structure beneath a judgment debtor that a judgment creditor needs in order to execute the judgment anywhere in the world."

IV. Conclusion

The confluence between fact-finding and legal principles is unique in this area of practice. Only experienced practitioners can navigate through the morass to enhance the probability of success for their clients.

About the Author

Eric (Rick) S. Rein is a partner in the litigation group of Chicago law firm, Horwood Marcus & Berk, Chartered. He is a graduate of Washington University and University of Miami School of Law and a member of the Illinois and Florida bars. Rick concentrates his practice in multijurisdictional litigation, specifically the recovery of foreign claims and assets and has handled complex international banking and fraud matters in more than 40 jurisdictions. Rick is also well regarded for his knowledge of international legal systems and frequently serves as special counsel to the financial services industry, corporations, attorneys, accountants, trustees, receivers, and high-net-worth individuals. In 2014, Rick was named Asset Recovery Lawyer of the Year by Lawyer Magazine Monthly. Rick is a well-sought after interview source on international asset recovery and has authored numerous articles on the subject. You can follow the topic on his blog through.

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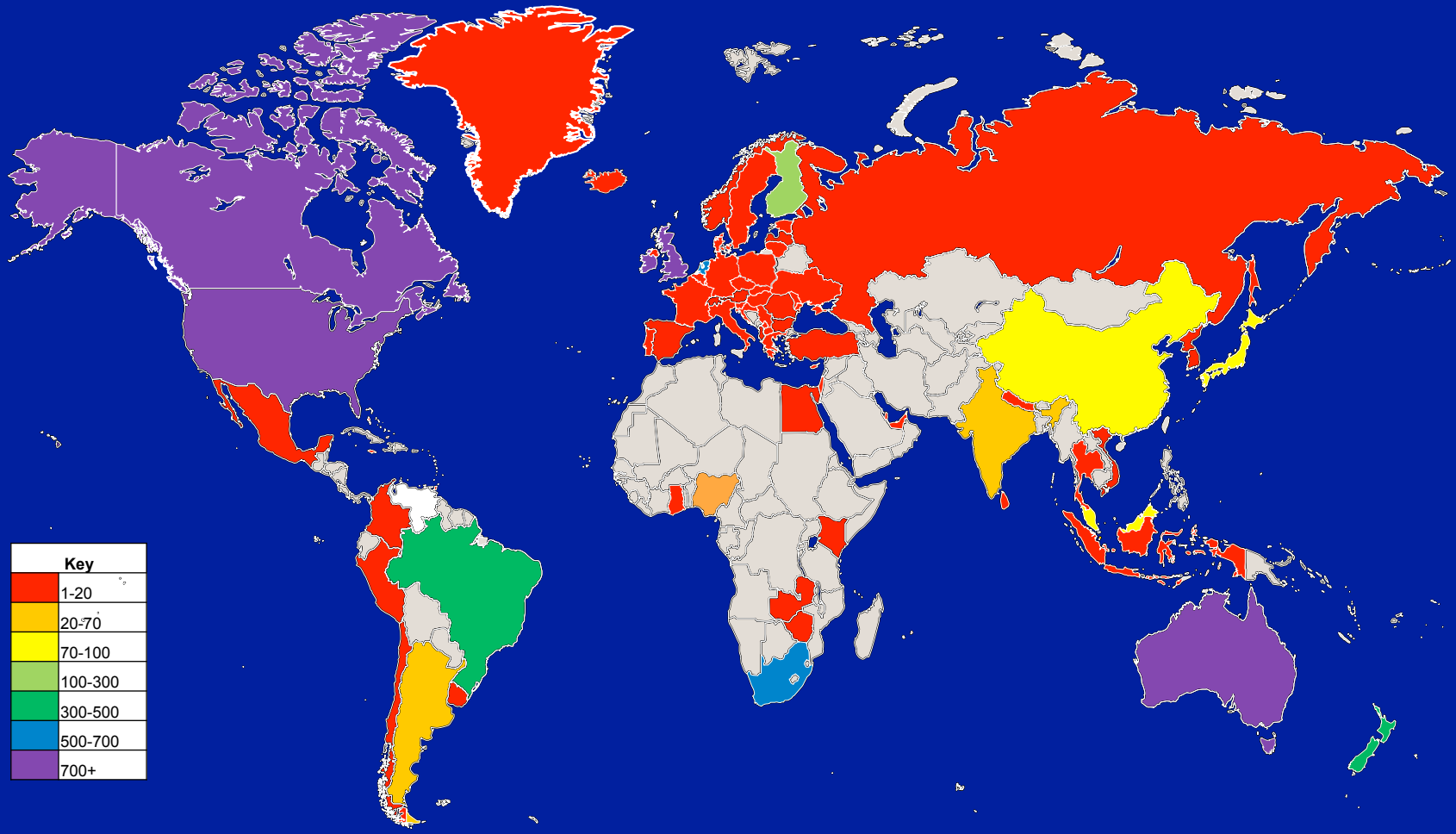

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- 2007 – 1,629
- 2008 – 1,415
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- 2010 – 709
- 2011 – 674
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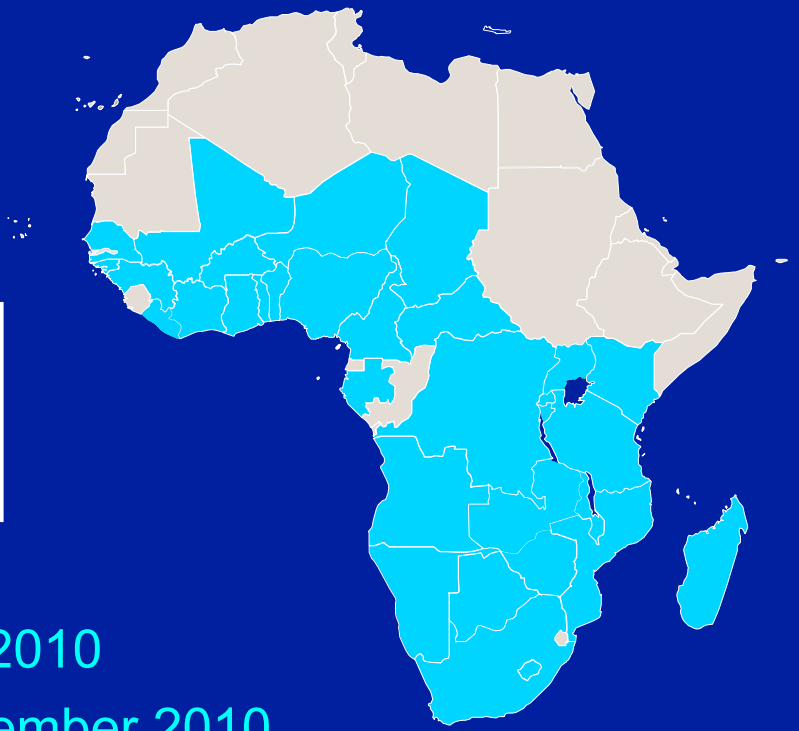

- First meeting – Dubai, UAE, February 2010
- Second meeting - Abuja, Nigeria, September 2010
- Third meeting - Cape Town, South Africa, September 2011
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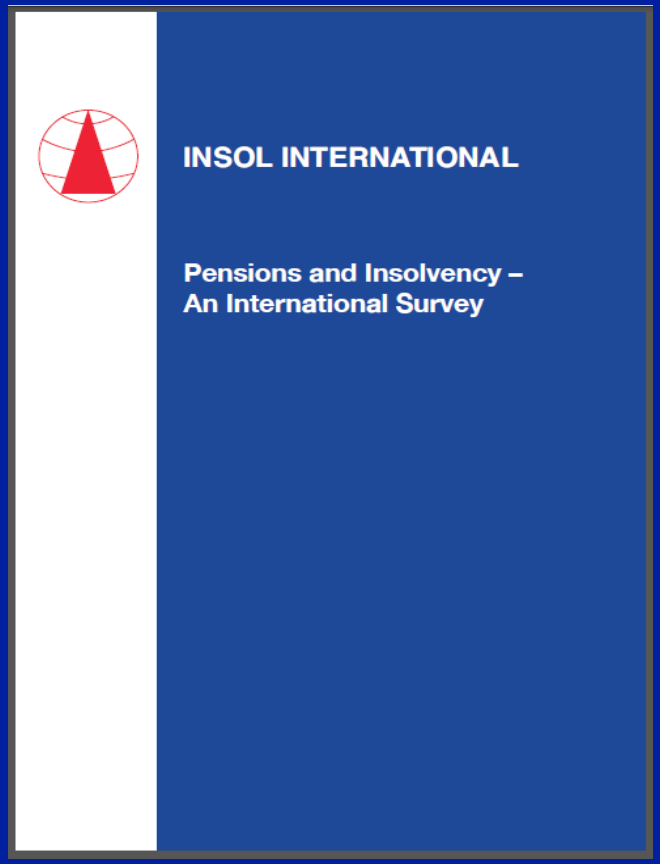

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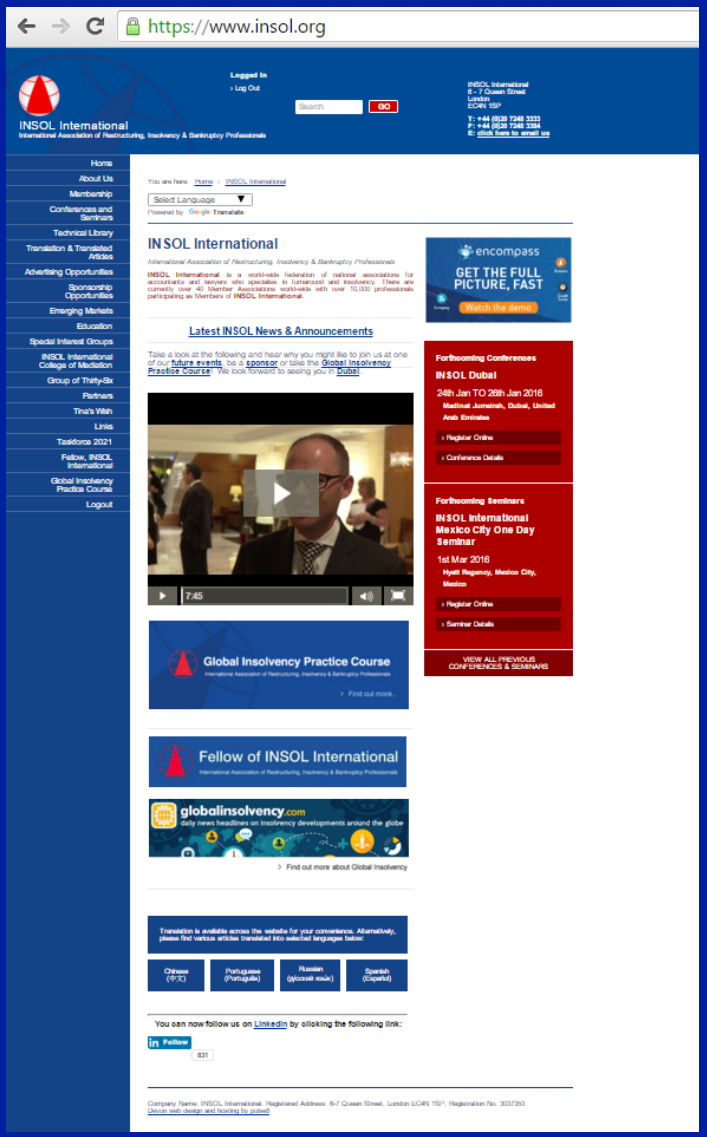

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Focus

- Engage with and consult across INSOL stakeholders
- in formulating the future vision and purpose of the association as we move towards 2021

Timing

- Report to be presented to INSOL Board October 2016
- Report to members at INSOL 2017

INSOL Taskforce 2021

Members

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Scott Aspinall, Wentworth Chambers, Australia
Cosimo Borrelli, Borrelli Walsh, Hong Kong
Judge Arthur Gonzalez (Retired), New York University, School of Law, USA
Jane Dietrich, Cassels Brock & Blackwell LLP, Canada
Adam Harris, Bowman Gilfillan, South Africa
Fernando Hernández, Marval, O'Farrell & Mairal, Argentina
Ian Mann, Harney Westwood & Riegels, Cayman Islands
Professor Rosalind Mason, Queensland University of Technology, Australia
Derek Sach, Chair, INSOL Lenders Group, UK
Peter Sargent, BHP Clough Corporate Solutions, UK
Howard Seife, Chadbourne & Parke LLP, USA
Nico Tollenaar, RESOR N.V., The Netherlands
Tiffany Wong, KPMG, Hong Kong
Farrington Yates, Dentons US LLP, USA

INSOL Taskforce 2021

Topics

- Membership Growth
- Education
- Thought Leadership
- Technology, Future Member Services & Delivery
- Alliances and Global Co-ordination
- Marketing and Public Relations
- Communication
- Advocacy

Future Events

INSOL International New Delhi, India One Day Seminar 22-23 April 2016

INSOL International Channel Islands
One Day Seminar
9 June 2016

Academics Colloquium, London
13-15 July 2016

INSOL International Guangzhou & Shanghai, PRC Seminars 28 & 30 September 2016

INSOL International British Virgin Islands
One Day Seminar
17 November 2016

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