FIRE MAGAZINE

Fraud • Insolvency • Recovery • Enforcement

ISSUE 21

FIRE International 2025 Vilamoura Edition

THE FLAGSHIP ASSET RECOVERY EVENT FOR THE FRAUD & INSOLVENCY COMMUNITY

INTRODUCTION

"Your network is your net worth"

- Porter Gale

We are delighted to present Issue 21 of the FIRE magazine in conjunction with the flagship Asset Recovery event, with a refreshed look for 2025, FIRE International in Vilamoura, Portugal.

In this FIRE International edition, our authors dive into all the pertinent issues facing practitioners in multiple jurisdictions, from recovering the value of assets in the UK, to asset tracing in Switzerland, to unmasking financial distress in Africa.

We thank you for joining us in Vilamoura, we hope you have enjoyed our flagship event and enjoy this thought-provoking issue. Thank you to all of our corporate partners, authors and members for their ongoing support to this ever-growing community.

Paul Barford
Founder/Managing Director
020 7101 4155
email Paul

Chris Leese
Founder/Chief Commercial Officer
020 7101 4151
email Chris

Danushka De Alwis
Founder/Chief Operating Officer
020 7101 4191
email Danushka

Maddi Briggs
Strategic Partnership Senior Manager
020 3398 8545
email Maddi

Amelia Gittins
Strategic Partnership Executive
020 3059 9797
email Amelia

Ben Sullivan
Commercial Director
020 3965 4386
email Ben

CONTRIBUTORS

Aziz Rahman, **Rahman Ravelli**
Gareth Bell, **Collas Crill**
Edmund Carter, **Collas Crill**
Marc Delehanty, **Serle Court**
Matthew Harders, **Collas Crill**
Yves Klein, **Monfrini Bitton Klein**
Iris Pfander, **Baldi & Caratsch**
Antonia Argyrou, **N. Pirilides & Associates**
Tatiana Manio, **N. Pirilides & Associates**
Zahler Bryan, **Serle Court**
Prakaash Silvam, **Oon & Bazul / IFG**
Bazul Ashhab, **Oon & Bazul / IFG**
Lionel Chan, **Oon & Bazul / IFG**
Claudia Cheah, **Skrine**
Karen Tan, **Skrine**
Pooja Mahajan, **Chandhiok & Mahajan**
Srivatsava Reddy Beerapalli, **Chandhiok & Mahajan**
Francisco Patricio, **Abreu Avogados / IFG**
Gary Miller, **Mishcon de Reya / IFG**
Rhymal Persad, **Mishcon de Reya / IFG**
Barry Coffey, **Mishcon de Reya / IFG**
Saffa Ahmed, **Mintz Group**
Wilson Leung, **Serle Court**
Andrew Ayres KC, **Twenty Essex**
Thomas Wong, **Twenty Essex**
Sean McGuiness, **Omni Bridgeway**
Mercy Okiro, **Accredited Mediator and Arbitrator**

CONTENTS

TL4 FIRE

QUARTERLY EVENT ROUND UP

FIRE STARTERS GLOBAL SUMMIT: DUBLIN 2025

We kicked off the final day of our summit with an inspiring keynote session featuring GB Olympic Ski Jumper, Eddie “the Eagle.” In his engaging talk, Eddie explored the idea that ‘Success Isn’t Always in the Winning, but in the Trying.’

In classic TL4 FIRE fashion, we closed out the summit with a bang at our Irish Whiskey Museum Tour - complete with a tasting, of course... Many thanks to Serle Court for hosting.

It was an amazing experience reconnecting with familiar faces and welcoming new ones in the FIRE Starters community. A huge thank you to our FIRE Starters Advisory Board, and our expert speakers for sharing their invaluable insights and inspiring discussions!

FIRE & ICE CIRCLE EUROPE 2025

Great to host FIRE & ICE Circle Europe over two days in March at Le Mirador Resort & Spa, Vevey. Top asset recovery practitioners, plenty of discussions, no shortage of opinions, and, of course, networking in a suitably scenic setting.

Thank you to our Advisory Board—Yves Klein (Monfrini Bitton Klein), Jennifer Fox (Ogier), Steven Molo (MoloLamken), Valerie Hohenberg (Wolf Theiss), and Dorothy Siron (Stephenson Harwood)—for curating such a fantastic event.

Special thanks to our event partners Vantage & Monfrini Bitton Klein

FIRE INTERNATIONAL VILAMOURA 2025

Our flagship conference for the global asset recovery community turned Vilamoura into a hub of activity, with the exceptional networking creating a buzz around the main session. But this is just what we do—we set trends on FIRE!

Attendees can vouch for the stellar content we delivered. We were honoured to hear from the inspiring Andrew Strauss, former Captain of the England Cricket Team, who shared powerful insights on the theme of ‘Leading by Example. Our agenda featured technical panel discussions and practical situational streams, keeping everything fresh and dynamic.

Golden afternoons, stunning views, and unforgettable experiences - the perfect way to connect and unwind! From scenic strolls through Albufeira to ocean adventures, our afternoon networking activities offered something for everyone. Thank you to everyone who made these moments count!

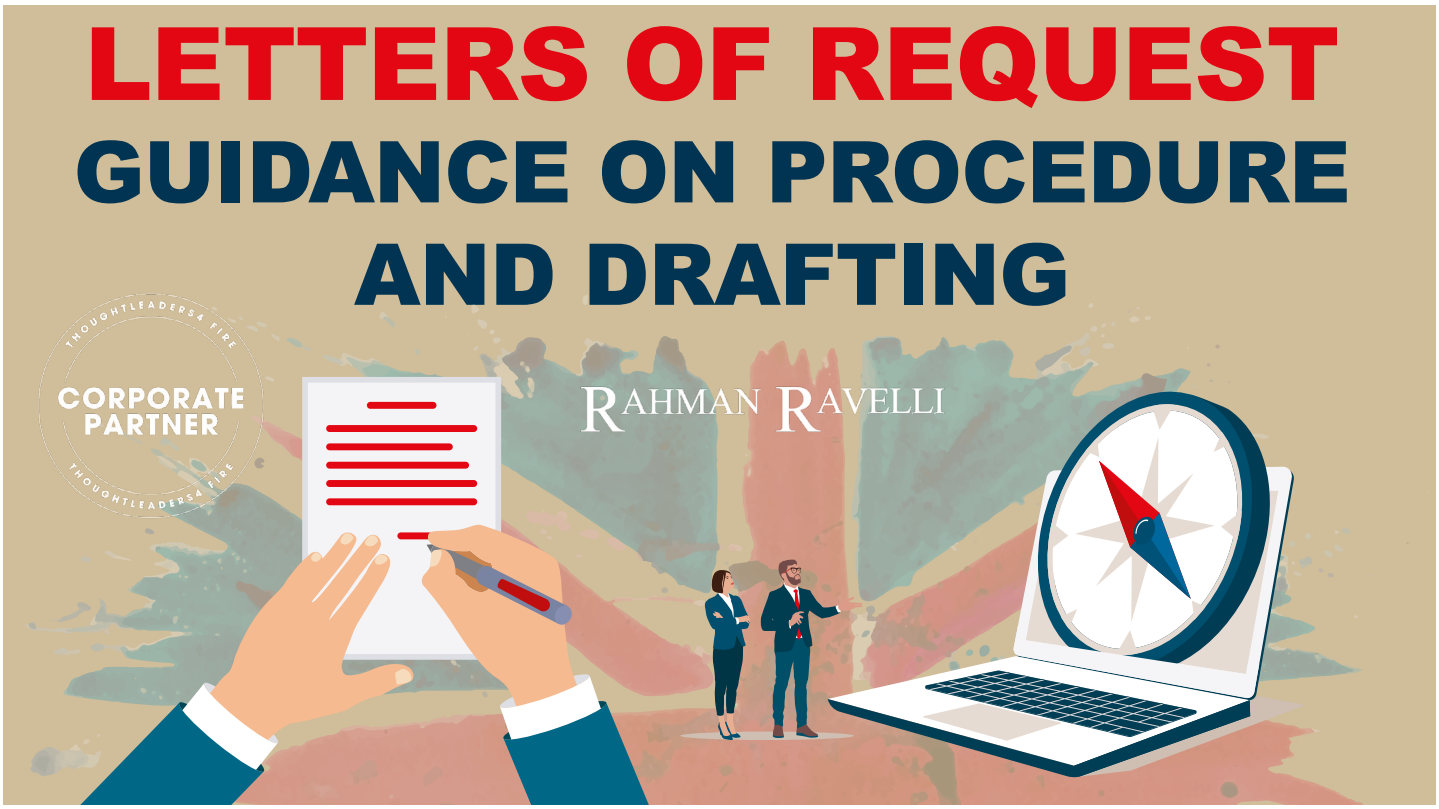
Upcoming Events

- **FIRE Channel Islands & Isle of Man**
  17 - 18 June 2025 | The Duke of Richmond Hotel, Guernsey
- **FIRE Starters: Summer School**
  17 - 19 September 2025 | Downing College, Cambridge
- **FIRE Americas**
  22 - 23 September 2025 | Kimpton Hotel Monaco, Washington D.C.
- **Sovereign & States Litigation Summit USA**
  23 - 24 September 2025 | Kimpton Hotel Monaco, Washington, D.C.
- **The International Arbitration and Enforcement Forum**
  8 October 2025 | Central London
- **Asset Recovery & Enforcement Circle**
  9 - 10 October 2025 | University Arms Hotel, Cambridge
- **FIRE Middle East**
  9 - 11 November 2025 | Shangri-La Hotel, Dubai
- **FIRE Asia Circle**
  25 - 26 November 2025 | Kuala Lumpur, Malaysia
- **Women in FIRE presents Asset Recovery in Action**
  27 November 2025 | Central London

To register for the events and speaking opportunities contact:

Melody Mok
Conference Portfolio Manager
t: +44 (0)20 3997 8527
e: melody@thoughtleaders4.com

LETTERS OF REQUEST
GUIDANCE ON PROCEDURE AND DRAFTING



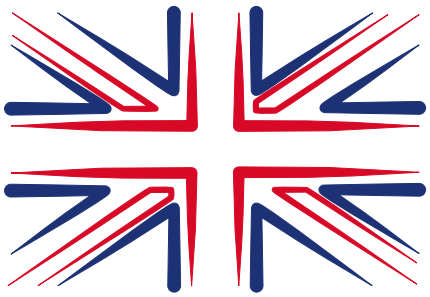
Authored by: Aziz Rahman (Senior Partner) - Rahman Ravelli

Letters of Request (LORs) are made possible through The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 ("Hague Evidence Convention"), which is ratified by 62 states (including the UK).

The UK has implemented the Hague Evidence Convention by enacting The Evidence (Proceedings in Other Jurisdictions) Act 1975 ("EPOJ Act").

Incoming Letters Of Request: The Procedure In The UK

For LORs incoming to the UK, the first draft is usually undertaken by the foreign lawyers in the jurisdiction of the ongoing proceedings. However, it's sensible to get the input of UK lawyers before the first draft is finalised to make sure that the Request complies with the fairly restrictive approach of the UK courts.



Once the LOR is approved by the domestic court, it is sent to the UK Ministry of Justice and the Foreign Process Section at the Royal Courts of Justice. It's then served on the receiving party.

Usually the receiving party will resist compliance with the LOR. After all, it's placing a burden on the receiving party to search for and disclose information in proceedings that they have no direct interest in. The Request may seek documents that are deemed sensitive or confidential, which the receiving party would prefer not to freely disclose.

If the LOR is contested, the requesting party (through their English solicitors) applies for an order to execute the LOR to give it effect.

The application will be accompanied by a witness statement, which explains the issues relevant to the proceedings, and provides (i) a detailed list of the documents sought, and / or (ii) the evidence that the witness is expected to be able to provide.

There may be a hearing to determine whether or not the order should be granted.

Once granted, the receiving party could face cost sanctions or enforcement measures for failing to comply with the order.

Specificity – A High Bar

One of the most important points for LORs in the UK is that they must not be used as a fishing exercise. The UK courts take a firm view on requests that are deemed to be too broad, and will refuse requests for lack of specificity or relevance.

Classes of documents are generally not allowed in the LOR, but a compendious description may be allowed. A compendious description could be "monthly bank statements for August to December 2020."[1]

General words like a request for "any memoranda, correspondence or other documents relevant thereto" or "any memoranda, correspondence or other documents referred to therein" are too wide and will be struck out.

In Galas v Aleve Inc [2018] EWHC 2366 (QB), Morris J set aside part of an order giving effect to a Letter of Request from a US Court on the basis that it identified categories of documents, which were impermissible, rather than specific documents.

The Requirement For 'Relevance'

Under s.2 of the EPOJ Act, the English Court has no power to order evidence to be taken that could not itself be ordered in English civil proceedings.

That means that the documents sought must be relevant to the issues in dispute at trial. The evidence sought should not merely be used for investigatory purposes. It cannot relate only to pre-trial disclosure.

A recent example is the decision in Byju's Alpha, Inc v OCI Limited & Ors [2025] EWHC 271 (KB), in which the UK court set aside the order that gave effect to the LOR because it represented an illegitimate attempt to obtain pre-trial discovery type material rather than evidence for trial.

Opinion

There is a balance between judicial comity, which requires a court to recognise and give effect to a LOR, and granting a LOR that may be deemed oppressive or illegitimate.

The EPOJ Act interprets the parameters narrowly, and the UK courts in turn have applied the law fairly restrictively.

For these reasons, parties seeking information from UK parties should request the input of UK lawyers at the earliest possible stage in drafting the LOR to minimise the risk of escalating costs and complexity if the LOR is refused by the UK courts.

1 See Lord Diplock and Lord Wilberforce respectively in Rio Tinto Zinc Corp v Westinghouse Electric Corp [1978] AC 547 at 560.

RAHMAN RAVELLI

Regulatory investigations, large-scale commercial disputes involving corporate wrongdoing, reputational issues, corporate liability and multi-jurisdictional enforcement. Asset recovery, internal investigations and compliance.

Discreet, bespoke and expert legal representation for corporates, senior business individuals and professionals in London, the UK and worldwide.

+44 (0)203 947 1539
www.rahmanravelli.co.uk

"Fresh and fearless in their thinking. They know their cases inside out."
The Chambers UK Guide

"A genuine powerhouse in the field of crime and fraud."
The Legal 500

APPLICATION OF THE "PROFITS RULE"

COLLAS·CRILL

IN RUKHADZE JUDGMENT A STARK REMINDER FOR FIDUCIARIES

Authored by: Gareth Bell (Partner) & Edmund Carter (Associate) - Collas Crill

In a much anticipated and significant judgment amongst legal practitioners and private client and corporate professionals alike, the United Kingdom Supreme Court considered in Rukhadze and Others v Recovery Partners GP Ltd and Another [2025] UKSC 10 the modern application of the so-called "profits rule".

That rule requires errant fiduciaries to account to their principal for any unauthorised profits which they obtain by virtue of their fiduciary role and, whilst the seven members of the Supreme Court differed in their reasoning, the appeal was unanimously dismissed with the consequence that the so-called "profits rule" survives (and indeed thrives) notwithstanding, and potentially because of, its harsh results and the associated deterrent effect.

Fiduciaries should therefore expect the "profits rule" to govern their conduct for the foreseeable future and probably, as Lady Rose suggested, until such time as the legislature enacts an amendment to that position.

Factual Background

The Appellants previously worked closely with the Respondents in the field of asset recovery. Ultimately, however, the Appellants and the Respondents parted ways acrimoniously and thereafter, the Appellants became engaged in a lucrative commercial opportunity available and previously known to them by dint of their relationship with the Respondents.

That opportunity was procured and diverted away from the Respondents by the Appellants. It ultimately resulted in a net profit to the Appellants of some USD 179,000,000.

The trial judge found that the relationship between the Appellants and the Respondents had been a fiduciary one. Accordingly, the Appellants owed various fiduciary duties - ultimately summarised by the Supreme Court as a "single-minded loyalty" - to the Respondents.

The Appellants were therefore ordered to account to the Respondents for the entirety of those profits minus an equitable allowance of 25% reflective of their work and skill.

The Appellants unsuccessfully appealed to the Court of Appeal and thereafter appealed again to the Supreme Court where they argued (amongst other things):

- that the "profits rule" and its consequences were unduly severe and failed properly to reflect modern business norms; and
- that the "but for" test establishing factual causation adopted in other tortious claims ought to be introduced in order to cure those apparent defects.

Decision of the Supreme Court

The seven members of the Supreme Court unanimously dismissed the Appellants' appeal and whilst there was intra-judicial disagreement as to reasoning, there was nonetheless a binding majority decision reached.

In a lengthy leading judgment, Lord Briggs reaffirmed the application of the "profits rule" and highlighted that the severity inherently associated with that rule is, contrary to the Appellant's case, central to its continuing application and, indeed, a key attraction.

The judgment of the Supreme Court also makes clear that it is no defence for an impugned fiduciary to argue that the profit would have been obtained by them irrespective of the breach (i.e. that causation is not made out). Other counterfactual defences grounded in the probability of consent being given had it been sought or the inability of the aggrieved principal ultimately to have made the profit themselves were also rejected. There are therefore few grounds upon which errant fiduciaries can defend their conduct.

Consequences

Fiduciary relationships can – as the Appellants themselves noted – arise in a variety of circumstances in modern commerce. They are not limited to traditional categories such as company directors and trustees. The decision in Rukhadze shows, however, that this has not diluted the serious consequences of a breach of fiduciary duty.

Fiduciaries, in whatever guise, should heed this decision as a timely reminder that the Courts are unlikely to sympathise with those who deviate from their core duty of "single-minded loyalty" to profit at their principal's expense and the consequences of so doing, whether in the civil or regulatory sphere, remain severe.

Particular care should be taken by those fiduciaries who, in the ordinary course of their business, owe duties to multiple similar entities each of whom could conceivably take advantage of any business opportunities of which the fiduciary becomes aware as a consequence of their role(s).

Moreover, fiduciaries in regulated industries and jurisdictions across the world should note that the spectre of reputational damage arising from litigation (and impliedly therefore regulatory action) has been rejected as a sufficient deterrent to breaches of duty.

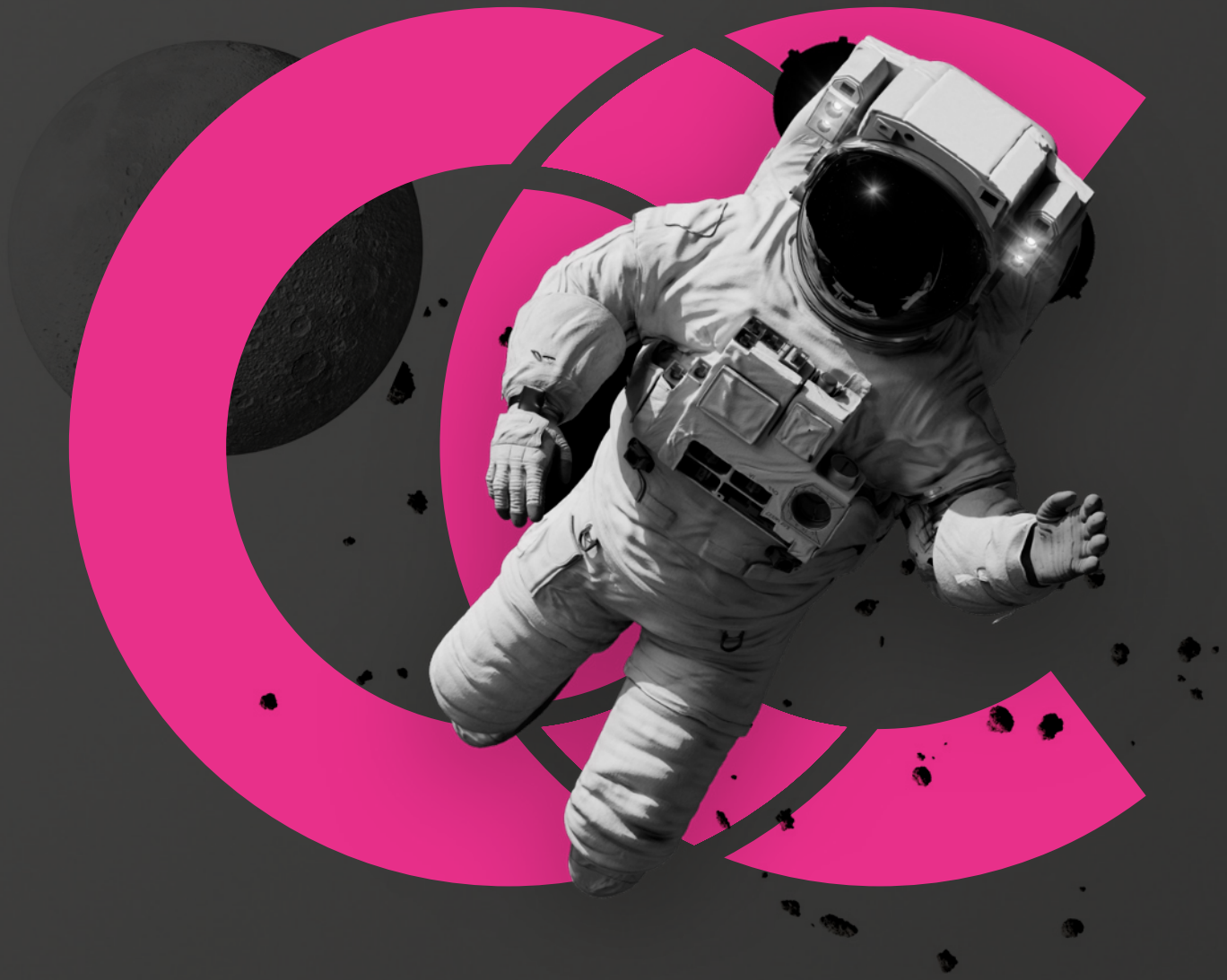
Monetary awards, commensurate with the profits improperly obtained by the fiduciary, remain, in at least the Supreme Court's view, the most effective deterrent and will no doubt remain the default remedy.

In that respect, maintaining a rigorous regime of disclosure of interests and business opportunities and obtaining consent thereto no doubt remains a central defence in any fiduciary's arsenal.

The Supreme Court did not consider in depth the equitable allowance afforded to the Appellants at first instance. It appears, however, that at least for now fiduciaries may obtain some reprieve by retaining what is effectively a "fair" proportion of the proceeds of a breach of duty. Such a position, on its face at least, appears anathema to an otherwise very strict approach. It may well, therefore, be the subject of challenge in the future (albeit in a different case).

COLLAS·CRILL

| Financial Services and Regulatory
| Insolvency and Corporate Disputes
| Private Client and Trusts
| Real Estate



Stellar results, down-to-earth people

> 'Technically excellent, very personable, super responsive' - Legal 500, 2024 -

We are known for being easy to do business with and take a hands-on approach to ensure an exceptional client experience every time.

Our global experts build trusted client relationships and advise some of the world's leading financial institutions, international businesses, trusts and funds, high-net-worth individuals and families across the globe.

To find out how we can help you, visit collascrill.com

WE ARE EXPERTS | WE ARE OFFSHORE LAW

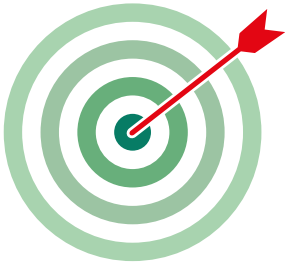
BVI | Cayman | Guernsey | Jersey | London


serle court
Serle Court offers a variety of skill sets that others can't provide, and houses some of the biggest names at the Bar
SERLE 6 COURT
Civil Fraud
Commercial Litigation
Company
Insolvency
International and Offshore
Partnership and LLP
Private Client Trusts and Probate
Property
Arbitration
Mediation
chancery & commercial
Serle Court
+44 (0)20 7242 6105
clerks@serlecourt.co.uk
www.serlecourt.co.uk

Authored by: Marc Delehanty (Barrister) - Serle Court

Marc Delehanty acted for the successful respondent bank in El-Husseiny v Invest Bank [2025] UKSC 4

The target of an asset recovery or enforcement action will naturally be assets of real financial or practical economic value. So, it is important that there are legal tools available in English law to facilitate challenges to transactions which result in the diminution of the value of assets (i.e., extending beyond challenges to transfers of ownership of assets).



One such tool is Section 423 of the Insolvency Act 1986 ("IA 1986"). It provides English courts with the power to reverse transactions at an undervalue entered into by a debtor where the debtor's purpose was to put assets out of the reach of its creditors or otherwise prejudice its creditors' interests. In recent years, the boundaries of Section 423 have been tested in cases where various different forms of transactions have been subject of challenge.

In its February 2025 decision in El-Husseiny v Invest Bank [2025] UKSC 4, the Supreme Court held that Section 423 may be engaged where a debtor which owns a company procures that that company transfer away company assets (i.e., assets owned legally and beneficially by the company).

The Court rejected the contention of the appellants that Section 423 was only available where a transaction involved the transfer of an asset beneficially owned by a debtor. This is because, even though an asset beneficially owned by the debtor has not been transferred away, creditors would be prejudiced by effect of the transaction: the reduction in value of the company shares owned by the debtor (against which the creditors might enforce).

On a proper interpretation of Section 423 there was nothing in its wording to limit it so as to exclude such transactions.

In broad terms, the appeal outcome means that it is no answer to a Section 423 claim involving transfers of corporate assets to say

'well, look, the debtor still holds his/her company shares, they haven't been transferred away and remain available for creditors to enforce against'.

What matters from a legal perspective – and what has always mattered to creditors from a practical perspective – is whether there has been a transaction involving a debtor's company, procured by the debtor, which has reduced or destroyed the value of those company shares. (Of course, Section 423 can also be used to challenge transactions beyond relatively straightforward transfers of assets away from a debtor's company – it can be deployed against multifarious transactions procured by debtors which result in a depletion or diminution in the value of their asset base.)

The judgment upholds the Court of Appeal's decision on this issue, but the Supreme Court's reasoning sweeps much more broadly and so will be of great interest to civil fraud / asset recovery lawyers and, indeed, general insolvency lawyers and practitioners. In resolving the interpretation arguments, the Supreme Court:

- Reasoned that it could not see why the same wide interpretation for Section 423 should not also apply to Sections 339 and 238, IA 1986 (which deal with challenges to transfers of assets in the period before individual bankruptcy and corporate insolvency, irrespective of whether there was an intention to prejudice creditors).
- Clarified that a "transaction" need not involve a transfer of an asset and would cover other types of prejudicial action, such as a debtor releasing a debt or surrendering a lease.
- Provided guidance on how to evaluate the receipt and provision of "consideration" in multi-party transactions for the purposes of Section 423 (which is related to but differs from the understanding of consideration in the contract law sense).
- Considered how the statutory bona fide purchaser defence for onward transferees of property, at Section 425(2), may operate when a transferee receives property from a company owned by the debtor rather than directly from the debtor.

Notably, the Supreme Court did not address the related question of whether debtors themselves (as distinct from their companies) can be said to have "enter[ed]" into a transaction for the purposes of Section 423(1) if their only acts in procuring and effecting their company's asset transfer were acts done in an official company capacity (e.g., as director). So, the Court of Appeal's decision that such acts are capable in law of constituting debtors themselves "enter[ing]" into the transaction remains undisturbed.

Finally, the Supreme Court did not address the question of the form of relief that would follow from a successful challenge to a transaction involving a corporate asset transfer. However, Sections 423–425 provide for a broad discretionary power to fashion appropriate relief depending upon all of the circumstances. Some possibilities include: vesting the asset back in the debtor's company or for transfer of the asset directly to the creditor.

FIRE
CI & IOM

FIRE Channel Islands & Isle of Man

Bringing together the interaction of onshore and offshore in the asset recovery space

17 - 18 June 2025

The Duke of Richmond Hotel, Guernsey

For partnership enquiries, contact **Ben Sullivan** at **+44 (0) 20 3965 4386** or email **ben@thoughtleaders4.com**

60 SECONDS WITH... MATTHEW HARDERS SENIOR ASSOCIATE COLLAS CRILL

Q Imagine You No Longer Have To Work. How Would You Spend Your Weekdays?

A Travelling the world! I would not stop until I've been to every country.

Q What Do You See As The Most Important Thing About Your Job?

A Building trust with clients. Trust is the foundation of a strong lawyer-client relationship. For clients to feel confident in my ability to represent their best interests, they need to believe that I am not only knowledgeable and competent but also genuinely committed to their case. Fostering that trust is paramount.

Q What Is The Most Significant Trend In Your Practice Today?

A The rise of AI and LLM tools such as ChatGPT. In particular, it has revolutionised (and simplified) the age-old task of reviewing large quantities of documents.

Q What Motivates You Most About Your Work?

A Being intellectually challenged. Having to routinely solve complex problems in unique circumstances helps keep things interesting – and means that no two days are the same!

Q What Skill Do You Wish You Would Have Learned Earlier In Your Career?

A Effective networking. It is an important skill, but one that takes time to develop. I would have benefitted from focusing more on my networking skills, and building my network, in my early years in practice.

Q If You Could Make An Office Rule That Everyone Had To Follow, What Would It Be?

A No "work talk" after lunch every Friday. Let everyone start easing into the weekend!

Q If You Could Do Someone Else's Job For A Day, Who Would It Be And What Is The Job?

A I would be a tour guide at The Egyptian Museum in Cairo. I have always been fascinated with Egyptian history!

Q What Song Would You Have As The Theme Tune For Your Life?

A Staying Alive, by the Bee Gees.

Q What Cause Are You Most Passionate About?

A Research into Multiple Sclerosis, which my wife suffers from. Fingers crossed for a cure one day.

Q What Is Something People May Not Know About You?

A I am a member of MENA International, the renowned high-IQ society.

Q What Does The Perfect Weekend Look Like?

A On Saturday, having a barbecue on the beach on a hot summer's day with friends, and eating ice cream while watching the sun set. On Sunday, sleeping in and then spending the rest of the day binge watching old sitcoms like King of Queens or Frasier.

Q Dead Or Alive, Which Three People Would You Most Like To Have A Dinner Party With, And Why?

A Robert Ripley, founder of the Ripley's Believe it or Not! newspaper panel series, television show, and radio show during the 1920s, which featured odd facts from around the world. He would have the most incredible stories of all the weird and bizarre things he searched the world to report on during his career.

Q Neil Armstrong, First Human To Walk On The Moon. Hearing His First-Hand Account Of The Apollo 11 Mission Would Be Incredible.

A My Nonna, who passed away before I was born. I'd love to meet her.

MONFRINI BITTON KLEIN

SWISS LITIGATORS

MBK.LAW

based in Geneva, borderless in our reach

Asset recovery
Business crime
Cross-border insolvency

Place du Molard 3
CH - 1204 Genève
mbk.law

Tél +41 22 310 22 66
Fax +41 22 310 24 86
mail@mbk.law

EXPERT OPINIONS AS ADMISSIBLE EVIDENCE IN SWISS CIVIL PROCEEDINGS

CORPORATE PARTNER

MBK.LAW SWISS LITIGATORS

IS SWITZERLAND A NEW LAND OF OPPORTUNITY FOR INTERNATIONAL EXPERTS?

Authored by: Yves Klein (Partner) - Monfrini Bitton Klein

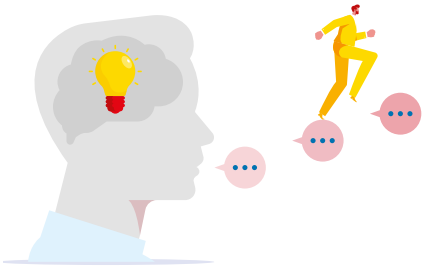
Introduction

Until recently, the prevalence of expert reports in Swiss civil proceedings was somehow more limited than in many other jurisdictions.

Indeed, party expert reports (or private expert reports) were essentially deemed to be mere party allegations rather than admissible evidence, and the central place was left to court-appointed experts.

As part of the most significant review of the Swiss Code of Civil Procedure since its entry into force in 2011, which aims to improve its practical efficiency, notably for foreign litigants, encompasses the possibility for cantons of creating international commercial courts which may use English as the language of the proceedings, as well as improving rules on hearings by video conference and on advance court costs, the role of private expert reports as evidence have been fundamentally changed.

This article will review the role of private expert reports until the entry into force of the new provisions and discuss those, together with the opportunities they present for litigants and experts.



The Evidentiary Power Of Private Expert Opinions Until 2025

Contrary to several cantonal codes prior to its entry into force in 2011, the Swiss Code of Civil Procedure did not contain any provisions on private expert reports.

Only reports of court-appointed experts were considered as evidence. In assessing the probative weigh of the court-appointed expert report, the judge could not depart from its conclusions of without compelling reasons.

As to private expert reports, in a ruling of 2015, the Federal Court, found that they could not be considered as evidence, but as mere factual allegations by the parties.

This ruling was criticized by many scholars and practitioners.

This did not mean, however, that private expert reports were useless.

Firstly, as pointed out by the Federal Court, the production of such a report by a party entailed an obligation for the opposing party to refute those allegations in details, failing which the court would rule in favour of the party producing the expert report, not so much on the basis of its evidentiary power as on the ground that the opposing party had not sufficiently fulfilled its duty of contestation of the factual allegations it contained.

In addition, it was admitted that if the expert report was corroborated by substantiated circumstantial evidence, it could assist in convincing the court that the facts were proven.

Lastly, in some instances, for example in construction defects cases, experts could be examined as material witnesses by the court.

In reply to the criticisms of the Federal Court ruling, the Swiss Government proposed, in its dispatch to Parliament of 2020, to amend the Swiss Code of Civil Procedure on the issue of private expert reports.

The Admissibility Of Private Expert Opinions As Evidence Since 2025

In the context of the revision Swiss Code of Civil Procedure that entered into force on 1 January 2025, private expert reports are now listed as one of the types of documents that constitute admissible evidence.

The Swiss Code of Civil Procedure, however, does not provide other specific rules in regard of private expert reports.

Contrary to court-appointed expert reports, judges will remain free in the assessment of the evidentiary value of private expert reports.

Typically, judges will assess the weigh of private expert reports on the basis of all relevant circumstances, notably the competence and reputation of the experts, their independence from the parties, the instructions given to them, and the process they followed in drafting their report.

It is likely therefore that the experts will be examined by the court in order to assess those criteria.

It will be interesting to see where Swiss courts and legal practitioners will draw their inspiration from: former cantonal case law and practice, rules applying to international arbitration, practice of neighbouring or more distant countries. It will probably take years for those rules to set.

Confronted with contradictory expert reports produced by the parties, Swiss courts will probably appoint judicial experts. There are indeed several advantages for court appointed experts over private experts, as they have a duty of independence, are under oath, receive their instructions from the court after a full consultation with the parties.

New Opportunities

One of the type of proceedings where the admissibility of private expert reports is probably having the most significant effect are summary proceedings, as under the rules of Swiss Code of Civil Procedure, only documentary evidence are admissible.

This is very relevant for the asset recovery practice, as summary proceedings apply to many of the most relevant proceedings, such as recognition of foreign judgments and arbitral awards, interim injunctions and attachment proceedings. In the latter cases, the use of private expert reports in ex-parte applications is a game changer.

In any event, the use of private expert reports in Swiss civil proceedings will certainly be multiplied over the coming years.

Conclusion

The admissibility of private expert reports in Swiss civil proceedings is presenting litigants and experts with new opportunities.

In the cantons adopting English as the language of the proceedings before commercial courts, international experts will have the opportunity of being examined in their working language. In all other courts, however, German, French or Italian will continue to prevail.

For Swiss practitioners, the coming months and years will be fascinating, as they will define the rules applying private expert reports and answer many pending questions.

VANTAGE

INTELLIGENCE

Strategic Intelligence

Vantage is an international intelligence boutique, focused on delivering strategic and actionable insights through sophisticated research and analysis, human source development and non-public information gathering.

Expertise:

- Litigation support
- Asset protection and recovery
- Cyber security and forensics
- Contentious issues
- MNPI-compliant Strategic Research
- Complex dispute resolution

Chambers RANKED IN Litigation Support 2024 Leading Firm

WWL | HOSTED BY LEXOLOGY

Asset Recovery 2024

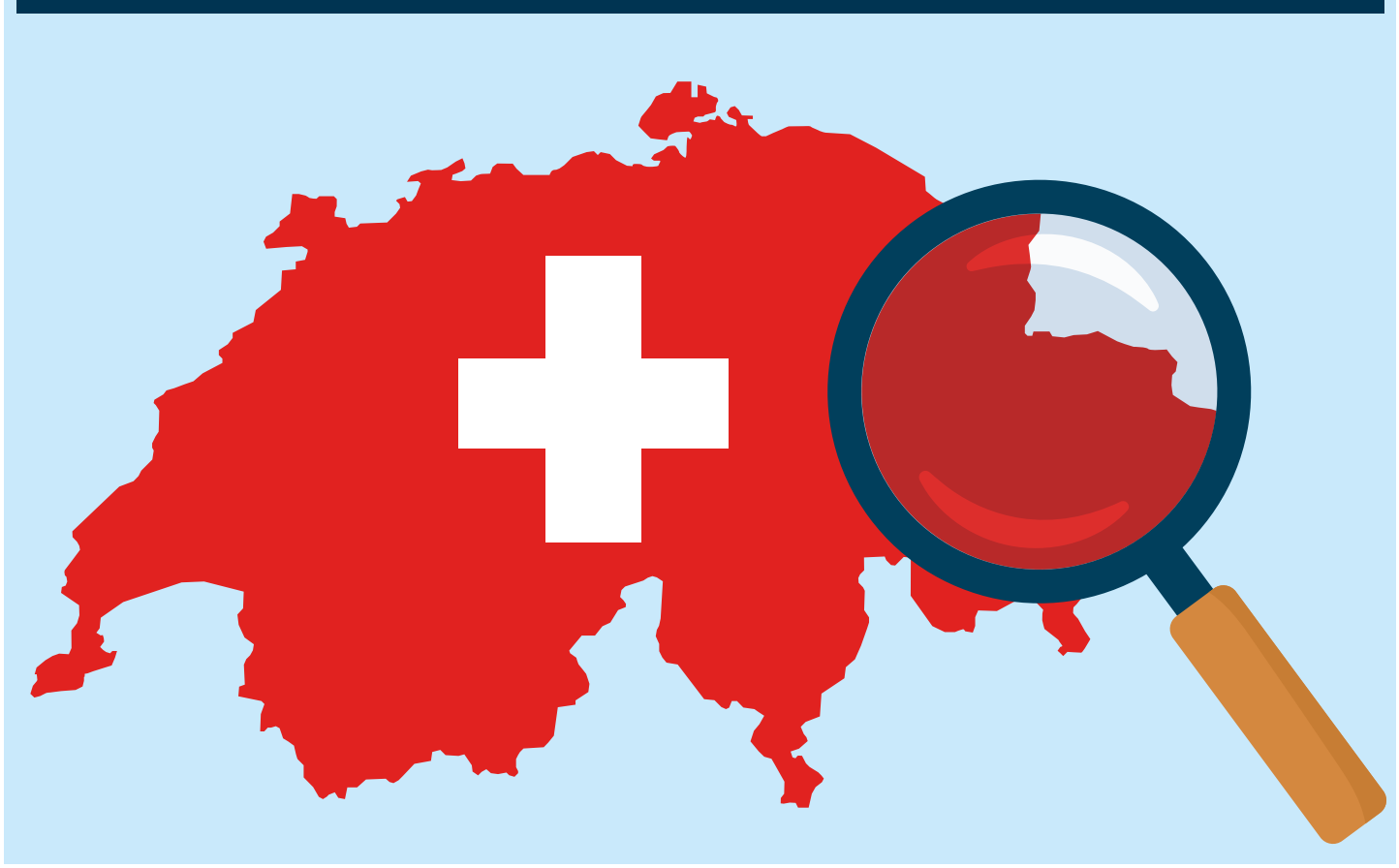
recognised in

400 CLIENTS

EXPERIENCE ACROSS **118** COUNTRIES

~$50bn COLLECTIVE DISPUTES VALUE

ASSET TRACING IN SWITZERLAND IN INTERNATIONAL DIVORCE PROCEEDINGS



Authored by: Iris Pfander (Associate Attorney) - Baldi & Caratsch

International divorce proceedings often involve complex questions about the identification and disclosure of foreign assets. A recurring constellation is the concealment of assets from the other spouse, and in particular assets in Swiss bank accounts. This article outlines the legal mechanisms available under Swiss law to obtain information about such assets, with a focus on interim measures.

Case Example

Consider a married couple residing in a jurisdiction outside the scope of the Lugano Convention. Divorce proceedings, including the division of matrimonial property, are pending in a foreign court. Under the applicable foreign matrimonial law, each spouse is entitled to full disclosure and to half of the marital assets. One spouse, however, refuses to disclose the full extent of his or her assets and conceals significant funds. Pursuant to a discovery request under 28 U.S.C. § 1782 in the United States, the other spouse uncovers evidence that the non-disclosing spouse holds a bank account in Zurich, Switzerland. Building on this discovery, the applicant spouse has reason to believe that marital assets are held in a Swiss bank account but does not know the amount. The primary objective of the spouse is therefore to determine the value of the funds in the account and, if necessary, secure them to safeguard his or her share of the marital property. To this end, the applicant spouse seeks an order compelling the Swiss bank to release the relevant account statements.

Legal Framework: Jurisdiction For Interim Measures In Switzerland

Switzerland provides a legal mechanism to establish jurisdiction in such situations. According to Article 10 of the Swiss Federal Act on Private International Law (PILA), jurisdiction to order interim measures lies with the Swiss courts at the place where the measure is to be enforced. The place of enforcement is where the measure must be taken to protect a right or legal interest—for example, where an unlawful situation exists that must be remedied, or where the person to be

compelled to act or refrain from acting resides or has its registered office.

When divorce proceedings are pending abroad, the jurisdiction of Swiss courts for interim measures may overlap with that of the foreign court.

According to the Swiss Federal Supreme Court, the granting of interim relief in such cases requires a legitimate interest in legal protection for the adoption of interim measures.

To specify when such interest exists, the Swiss Federal Supreme Court has identified five case groups in which there is a legitimate interest in legal protection. At least one of the following case groups must apply in order to establish jurisdiction in Switzerland.

The Five Case Groups

1. Lack of Equivalent Foreign Provisions

If the applicable foreign law lacks provisions comparable to Article 276 of the Swiss Civil Procedure Code (CPC), in conjunction with relevant matrimonial protection provisions in the Swiss Civil Code (CC), Swiss courts may intervene. These provisions allow Swiss courts to issue a wide range of measures designed to safeguard economic fairness during divorce proceedings. Article 276 CPC specifically empowers courts to order interim measures, such as compelling the spouse or a third party to disclose information or documents relevant to income, assets, and debts, or to pay maintenance during the divorce proceedings.

2. Inability to Enforce Foreign Interim Orders in Switzerland

If interim measures issued by a foreign court cannot be enforced in Switzerland—a frequent scenario due to their non-final nature and the highly contested enforceability of such measures in both case law and legal scholarship—the applicant spouse may seek interim relief directly from a Swiss court.

3. Securing Future Enforcement Against Swiss Assets

Interim measures may be necessary to safeguard the future enforcement of claims involving Swiss-based assets. This case group concerns the preventive securing of assets through interim relief, in order to preserve the possibility of future enforcement. For instance, a court may restrict a party's ability to dispose of assets held in a Swiss bank account. Such restrictions are explicitly foreseen in Articles 172 et seq. CC, which allow the court to impose measures to protect the economic basis of the family. The subject matter of such restrictions may include any kind of asset, such as a bank account, securities portfolio, or real estate. The content of the restriction typically consists of a requirement that the other spouse consents to any disposition over a specifically designated asset, coupled with a judicial order prohibiting such disposition without this consent. These measures may also include the registration of blocking notices in the land register.

4. Urgent Risk and Lack of Effective Remedies

Where there is an urgent risk of irreparable harm, particularly a risk that assets may be dissipated or concealed—i.e., a risk of frustration of future enforcement—and the requested information cannot be obtained through the competent foreign court or via mutual legal assistance under the Hague Evidence Convention, Swiss courts may grant interim measures. It should be noted that, in principle, the court handling the main proceedings is also responsible for issuing ancillary measures, such as interim measures. However, in cases where the foreign court cannot provide effective legal protection, Swiss jurisdiction may be justified.

5. Unreasonable Delays in Foreign Proceedings

If it is unlikely that the foreign court will issue a timely decision, for example due to procedural backlog or jurisdictional challenges, and there is a risk that assets may be transferred or concealed in the meantime, the applicant may turn to the Swiss courts to prevent significant disadvantage.

Application to the Case Example

Assuming the applicant spouse demonstrates an urgent risk—that the concealment of assets may irreparably impair marital property claims—and further shows that obtaining information through foreign proceedings or mutual legal assistance is not feasible, the fourth case group applies. In this case, the Zurich court has both international and local jurisdiction under Article 10 PILA, as the bank required to disclose the relevant documents has its legal seat in Zurich.

Scope of Interim Measures

Once jurisdiction is established, the Swiss court must assess the admissibility and scope of interim relief. According to Swiss case law, the lex fori (Swiss procedural law) governs the form of interim measures, which may include injunctions, disclosure orders, or orders directed at third parties such as banks. However, the substantive basis for the relief—i.e., whether a right has been violated or is at risk of violation—is determined by the lex causae (the applicable foreign substantive law).

Given the applicant's legal entitlement to half of the marital assets and the opposing spouse's deliberate concealment, the conditions for interim relief are likely met. The Zurich court may therefore order the bank to disclose the relevant account statements.

Conclusion

In international divorces involving concealed assets in Switzerland, Article 10 PILA provides an effective legal framework for interim relief. The five case groups defined by the Swiss Federal Supreme Court ensure that Swiss courts may act when foreign remedies are insufficient. Whether due to the lack of equivalent provisions, enforceability issues, urgency, or procedural delays, Swiss courts can play an important role in ensuring the protection of marital property rights across jurisdictions.

FT INNOVATIVE LAWYERS EUROPE 2023 WINNER

Pinsent Masons

A litigation powerhouse, recognised as a market leader in complex and high-value disputes

Our award-winning, international team offers a comprehensive specialist service covering all aspects of complex litigation, arbitration and dispute resolution,civil fraud and asset recovery.

We boast a leading multi-disciplinary team in jurisdictions across the UK, Europe, the Middle East, and the Asia Pacific regions. We are uniquely positioned to advise on complex, big-ticket mandates. Our disputes lawyers work alongside our growing team of forensic accountants and e-data specialists to enable us to provide a holistic approach and bring about pragmatic solutions.

Our extensive services include conducting internal investigations for businesses, advising on the available interim remedies, assisting our clients to reach commercial settlements, proposing and implementing tailored litigation strategies all the way up to trial and (often crucially in fraud cases) assisting our clients in navigating the challenges of enforcing judgments.

Alan Sheeley
Partner, London
+44 (0)20 7054 2626
+44 (0)7971 871 229
alan.sheeley@pinsentmasons.com

Jennifer Craven
Partner, London
+44 (0)20 7054 2596
+44 (0)7545 426 770
jennifer.craven@pinsentmasons.com

www.pinsentmasons.com

A PURPOSE-LED PROFESSIONAL SERVICES BUSINESS WITH LAW AT THE CORE

16744480

THE 1ST APPOINTMENT OF A SPECIAL MANAGER IN LIQUIDATION PROCEEDINGS IN CYPRUS

Authored by: Antonia Argyrou (Partner) & Tatiana Manio (Associate) - N. Pirilides & Associates

Whereas the power of the Cyprus Courts to proceed with the appointment of a Special Manager in the context of liquidation proceedings in Cyprus is codified under Section 250 of Cyprus Companies Law, Cap.113, since 1959, such appointment was only sought by the Official Receiver – and the Court exercised such power under Section 250 of Cap.113 – only in 2025.

More particularly, Section 250 of Cap.113 provides that where in any proceedings the official receiver becomes the liquidator of a company, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court, and the Court may appoint a special manager of the said estate or business to act during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court. Also, such a special manager shall

give such security and account in such manner as the Court directs and he shall receive such remuneration as may be fixed by the Court.

The matter of the appointment of a Special Manager in Cyprus was considered for the first time in Re East Point Metals Limited, Petition no. 151/2022, dated 22.01.2025, whereby the Official Receiver filed an application before the District Court of Nicosia (in the context of the Petition by which the liquidation of the company was ordered by the Court previously), requesting the appointment of a special manager in a company (under liquidation), as well as the issue of a Court Order defining the powers and remuneration of the proposed special manager to be appointed as such.

The application of the Official Receiver was proposing a specific person (a licensed insolvency practitioner) to be appointed as a special manager and it was accompanied by an affidavit explaining that the company in liquidation is solvent and its liquidation

was the result of the oppressive behaviour of the majority shareholders against the minority shareholders of the said company and that the said company maintains important assets abroad, as well as subsidiaries of a very significant value, on which the Official Receiver has to exercise control. In relation to the necessity of appointing a special manager, the affiant explained that the Official Receiver does not retain the specialised know-how which is required for the administration of the assets of the said company, which are complex, of significant value and dispersed all over the world. Further, the Official Receiver does not retain the resources or human resources, nor the know-how to proceed with the required actions for the protection of the assets of the company located outside the Republic of Cyprus. Same concerns as to the capacity of the Official Receiver to manage the aforesaid assets, were presented in the context of the proposed special manager/licensed insolvency practitioner as well.

In examining the above application of the Official Receiver, the Court initially noted that the Cyprus Courts, when examining Section 250 of Cap.113 for the appointment of a special manager, may draw guidance from any case law or books concerning Section 177 of English Insolvency Act 1986 which is identical to Section 250 of Cap.113 and concluded that it is up to the Court's discretion to proceed with the appointment of a special manager in a company, and only if such appointment will be for the best interests of the company and its creditors.

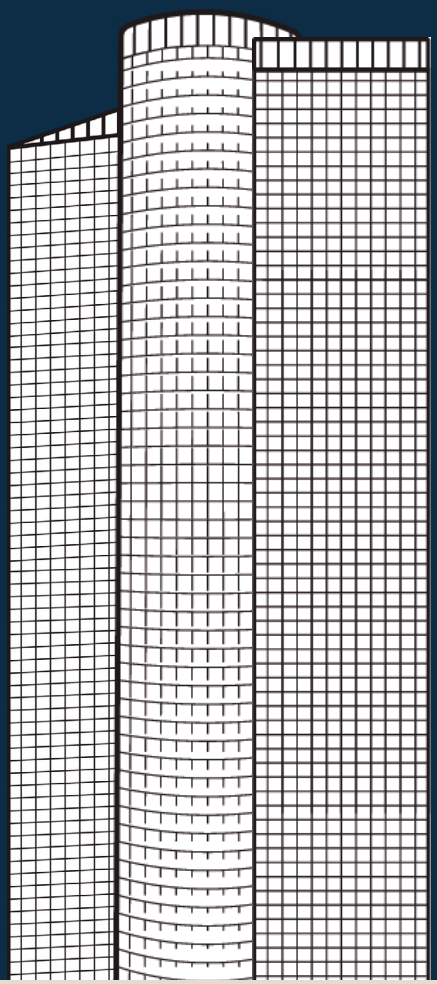
In light of the above evidence presented before the Court, the Court was satisfied as to necessity of appointing a special manager, and thus proceeding with the issue of an Order appointing the proposed by the Official Receiver person as a special manager of the company in liquidation.

Additionally, the appointed special manager was ordered to sign a guarantee for €200,000, in accordance with Section 250(2) of Cap. 113 and was also instructed by the Court to be providing the Official Receiver with a report concerning all of his actions relation to this liquidation every 6 months.

We strongly believe that the above judgment will be followed by a number of similar requests by the Official Receiver for the appointment of a special manager in companies in liquidation, something that will definitely expedite the liquidation proceedings and at the same time it will ensure that a person with the necessary skills and expertise (something which is not always the case when a private liquidator is appointed by a decision of the creditors and/or contributories of the company in question) will manage the business, matters and assets of a company with special characteristics and complex matters in question, for the best interests of the company in liquidation and its creditors; of course, it remains to be seen how the Official Receiver will make use of this 1st judgment of the Cyprus Courts which paved the way for more appointments of special managers.

ASSERSON
WIN DIFFERENT

Asserson Law Offices



With offices in the UK, Israel and the US, we have a track record of success in running complex cross-border disputes in court proceedings and international arbitration, under English and US law.

'Energetic, imaginative, efficient and no-nonsense. Driven by solutions and pragmatism.' - Legal 500

'An excellent team who work seamlessly and are always available as required, explaining any point simply and clearly.' - Legal 500

We offer high quality, flexible and personal services at fair and transparent prices, and our clients rely on us to be their trusted adviser.

Baruch Baigel
Partner & Head of Dispute Resolution
baruch.baigel@asserson.co.uk

Yisrael Hiller
Partner
yisrael.hiller@asserson.co.uk

Shimon Goldwater
Partner
shimon.goldwater@asserson.co.uk

Elliot Lister
Partner
elliot.lister@asserson.co.uk

Michael Abel
Partner
michael.abel@asserson.com

Lynn Yin
Legal Director
lynn.yin@asserson.co.uk

Take us on to achieve your goals:

Commercial Disputes | International Arbitration | Litigation | Asset Recovery | Fraud Litigation
International Enforcement | US Disputes | US Transactions

60 SECONDS WITH...
ZAHLER BRYAN
BARRISTER
SERLE COURT

Q Imagine You No Longer Have To Work. How Would You Spend Your Weekdays?

A If money were no object, I would travel with the English rugby team on their various tours, combining my love of rugby with discovering new and exciting places around the world

Q What Motivated You To Pursue A Career In Law?

A The realization that I could turn skills acquired growing up and arguing with my 5 siblings to good use

Q What Motivates You Most About Your Work?

A Solving problems for people in difficult circumstances

Q What Is The Most Significant Trend In Your Practice Today?

A An increasingly aggressive approach to litigation, even in private client work

Q How Do You Deal With Stress In Your Work Life?

A I enjoy physical challenges and am currently training for our annual attempt at the Total Warrior obstacle course

Q What Has Been Your Most Memorable Experience During Your Career So Far?

A Arguing with Lord Neuberger and the other Supreme Court Justices as a judicial assistant at the Supreme Court (and sometimes feeling like I might have made a difference, if not in the outcome then in how it was reached)

Q If You Could Give One Piece Of Advice To Aspiring Practitioners In Your Field, What Would It Be?

A Remember to take time off – it's important to decompress and relax when you can

Q If You Could Start All Over Again, What If Anything Would You Do Differently?

A I'm not sure there's anything I would do differently. I feel very lucky to have ended up doing a job I love and I enjoyed the journey I took to get here

Q Do You Have A Favourite Food?

A Pad Kee Mao – the spicier the better

Q What Brings You The Most Joy?

A Relaxing with family and friends

Women in FIRE®

Women in FIRE connects women in litigation or whose practice encompasses or touches upon Fraud, Contentious Insolvency, Asset Recovery and International Enforcement.

This initiative brings together female practitioners and allies of all backgrounds and experiences in one room to discuss current challenges and share knowledge. It is all about continuous connection and forging strong networks that elevate women in the industry. Scan the QR code to find out more.

Upcoming Events

- **FIRE Channel Islands & Isle of Man**
  'Women in FIRE' Networking Brunch - 17 June 2025
- **FIRE Middle East 2025**
  'Women in FIRE' Afternoon Tea - 9 November 2025
- **Women in FIRE presents Asset Recovery in Action**
  Central London - 27 November 2025

To get involved please contact:

Danushka De Alwis
Founder/Director

T: +44 (0) 20 3580 5891
E: danushka@thoughtleaders4.com

NAVIGATING THE COMPLEXITIES OF CRYPTOCURRENCY FRAUD

RECOVERY OF STOLEN ASSETS IN RESPECT OF USDT (TETHER)

CORPORATE PARTNER

IFG

Authored by: Prakaash Silvam (Partner), Bazul Ashhab (Managing Partner) & Lionel Chan (Partner) - Oon & Bazul / IFG

Introduction

Recovering stolen cryptocurrency is challenging due to the decentralized nature of many cryptocurrency assets, the irreversible nature of such transactions, and the pseudonymity aspect. This makes it difficult to identify the fraudsters and to trace and reverse cryptocurrency transactions.

Victims of these cryptocurrency frauds will often need to wait for the assets to be moved by the fraudsters to centralized cryptocurrency exchanges or Virtual Assets Service Providers ("VASPs") to freeze and recover the stolen assets. However, and even then, lack of regulation, slow legal processes, and challenges in cross-jurisdictional issues can delay recovery. Additionally, fraudsters use techniques like mixers, tumblers, and privacy coins to obscure the source and movement of stolen funds. These elements make recovering stolen cryptocurrency difficult.

Increasingly, there has been a surge in the use of stablecoins, and in particular, USDT (Tether).

When it comes to the tracing and recovery of the USDT, its features provide several unique advantages in the recovery of stolen cryptocurrency compared to other decentralized cryptocurrencies like Bitcoin (BTC) or Ethereum (ETH). These stem from USDT's centralized nature and specific features designed to enhance traceability and control, as will be explored in this article.

How Centralised Cryptocurrency Exchanges / Vasps Assist In Recovering Stolen Cryptocurrency

Centralized VASPs collect and retain Know Your Customer ("KYC") information and have powers over the cryptocurrency wallets in their custody. This allows them to freeze cryptocurrency wallets in their custody and to provide information regarding their customers.

These powers are contractually stipulated in the user agreements and generally include a discretion for the centralized VASPs to freeze funds in the wallets in their custody on their own volition.

Fraud And Asset Recovery In Law

Laundering processes include mixing stolen assets with "clean" cryptocurrency, which are designed to distance the funds from their source and make them difficult to trace. When fraudsters are satisfied with how "clean" the stolen funds appear—or with how muddied the transaction trail has become—they will "cash out" by passing the stolen funds through a VASP, converting them into fiat currency (e.g. US dollars) to preserve their value.

The legal process for recovering stolen crypto assets can be broken down into the following stages:

Stage One: Identify and Trace

When it has been determined that cryptocurrency has been misappropriated by fraudsters, it is crucial to act swiftly—first to identify the stolen assets and determine their latest whereabouts. This is typically done with the assistance of specialized crypto-tracing firms using blockchain analysis and forensic investigation techniques.

Stage Two: Obtain Court Orders to Freeze Assets and Obtain Disclosure

In Singapore, the High Court in ByBit Fintech Ltd v Ho Kai Xin [2023] 5 SLR 1748 confirmed that proprietary injunctions can be made to claim ownership over stolen cryptocurrency. Therefore, once the stolen cryptocurrency is identified and traced to a VASP, the next step is to secure the funds quickly. This includes obtaining freezing injunctions against the crypto wallets held with recipient VASPs.

Disclosure orders should also be sought against the VASPs to obtain information about the identities of the customers and to further trace the movement of the stolen funds.

These court orders should be pursued soonest to prevent further transfers or dissipation, to aid in the further tracing of the funds, and to identify the fraudsters.

A common challenge in such proceedings is the fact that the fraudsters are persons whose identities are unknown. In Singapore, in CLM v CLN and others [2022] SGHC 46 ("CLM v CLN") it was held that it is not a contravention of the Singapore Rules of Court 2021 to grant injunctive relief, including ancillary disclosure orders against "persons unknown". The Singapore Courts do not require the defendant to be specifically named in crypto fraud proceedings. However, the description of the defendant must be sufficiently certain to identify both those who are included and those who are not.

Stage Three: Enforcement of Court Orders

Service of court orders on the VASPs may be challenging if they are located out of jurisdiction as there will be the added hurdle of seeking recognition and enforcement of the orders in the relevant foreign court. This will necessarily involve additional time, costs, and legal complexity, especially in jurisdictions with stricter rules on recognition of foreign-issued orders, or where the legal framework around virtual assets is still developing. VASPs may be based in different legal systems and are therefore subject to varying compliance standards. Some exchanges are more accommodating than others.

In practice, many of the crypto exchanges and VASPs—particularly those with global reputations or substantial market capitalization—have demonstrated a willingness to comply with court orders voluntarily, sometimes even without the need for formal recognition proceedings. Where the likelihood of voluntary compliance by a VASP is high, it is important to engage them in negotiations proactively with the force of court orders to encourage compliance and cooperation in returning the funds.

The Reasons For The Popularity Of Stablecoins

Value-Retaining Cryptocurrency

Stablecoins have become an increasingly attractive option for users looking for stability and liquidity. Unlike other cryptocurrencies, stablecoins are designed to be pegged to fiat currencies, typically the US dollar. They are also designed to maintain consistent value, providing a safeguard against market volatility that characterizes traditional cryptocurrencies like BTC or ETH. While BTC and ETH are subject to significant price fluctuations, stablecoins offer a comparatively more reliable alternative (albeit there are also risks of depegging), making them particularly appealing to users who wish to avoid depreciation and ensure that the value of their assets is preserved.

Liquidity

Compared to other cryptocurrencies, stablecoins offer high liquidity and are generally easily convertible to fiat currency across a wide range of platforms, including the major cryptocurrency exchanges. Its widespread acceptance ensures that users can quickly transfer funds across borders, avoiding the limitations of less widely accepted cryptocurrencies. For users, this liquidity makes stablecoins the preferred choice for transactions that require efficiency, stability, and global usability.

How Fraudsters Abuse These Features

While stablecoins offer clear benefits for users, these very same features also make them attractive tools for fraudsters.

According to a United Nations Report on Casinos, Money Laundering, Underground Banking, and Transnational Organized Crime in East and Southeast Asia: A Hidden and Accelerating Threat (2024), USDT is the preferred asset of money laundering and organized crime in East and Southeast Asia.

Preserves Value of Stolen Assets

Fraudsters often convert the stolen assets into stablecoins to preserve their value. Stablecoins provide a way for criminals to "lock in" the value of stolen funds without being exposed to price fluctuations common to other cryptocurrencies.

Obfuscation

Due to its high liquidity, stablecoins have increasingly become a crucial instrument in layering and obfuscation techniques. Stablecoins, and in particular USDT, can be traded with relative ease across a range of centralized and decentralized platforms, including exchanges with less robust KYC enforcement. Criminals may transfer stolen funds through multiple wallets and decentralized finance ("DeFi") platforms, engaging in cross-chain transactions to muddy the transaction trail. This makes tracing more resource-intensive and increases the chances that the funds will be successfully laundered before law enforcement or victims can intervene.

Unique Advantages For Recovery Of Usdt

Backdoor Programming

USDT, like certain other centralised stablecoins, offers a unique advantage to victims of crypto fraud. Unlike traditional decentralised cryptocurrencies, where victims often must wait for stolen assets to reach exchanges before initiating recovery, USDT incorporates an internally programmed "backdoor" feature that enables early intervention.

Correction at Wallet-level

Tether can freeze, burn, and/or reissue the USDT back to its rightful owner directly at the wallet level. This "backdoor" mechanism circumvents the uncertain and sometimes lengthy wait for fraudsters to move the assets into an exchange. As a result, USDT provides victims with an additional recovery route and increases the likelihood of recovering stolen assets swiftly. By freezing a wallet, Tether (the issuer of USDT) disables the "send USDT" function, thereby preventing further dissipation and dilution of the stolen funds until the freeze is lifted.

In their October 2023 Press Release, Tether reported that it had assisted 31 agencies globally in investigations spanning 19 jurisdictions, leading to the freezing of a total of US$835 million, primarily linked to theft. More recently, in May 2024, it was also reported that Tether had frozen US$5.2 million worth of USDT due to its connection to phishing scams, demonstrating its willingness to cooperate with the authorities. Given their willingness to cooperate with the authorities, it is likely that Tether will comply with freezing and disclosure orders issued by the Court.

Conclusion

The centralized nature of USDT, combined with Tether's control mechanisms, enhanced traceability, and demonstrated cooperation with the authorities, offers significant advantages in the recovery of stolen cryptocurrency. These features allow for an additional and faster recovery process compared to other decentralized cryptocurrencies, and which should therefore be considered and discussed in seeking to recover stolen cryptocurrency.

MAITLAND

Maitland is one of the leading sets of barristers' chambers in the UK. Based in London's Lincoln's Inn, we offer legal advice and advocacy of the highest quality both domestically and internationally.

We are consistently ranked as a leading set in all our areas of expertise across the civil fraud, commercial, corporate, insolvency, real estate, financial, chancery and related fields. We appear across a full range of UK civil courts and tribunals including the Supreme Court and Privy Council as well as in Caribbean, Asian and other jurisdictions.

"An impressively deep stable of elite silks and juniors"

Chambers UK

CONTACT

For further information, please contact our Clerks using the details below:

John Wiggs - Senior Clerk
jwiggs@maitlandchambers.com
+44 (0)20 7406 1251

Robert Penson - Deputy Senior Clerk
rpenson@maitlandchambers.com
+44 (0)20 7406 1258

Luke Irons - Deputy Senior Clerk
lirons@maitlandchambers.com
+44 (0)20 7406 1257

7 Stone Buildings
Lincoln's Inn
London
WC2A 3SZ

www.maitlandchambers.com

THE EVOLUTION OF RESTRUCTURING AND INSOLVENCY LAWS IN MALAYSIA OVER THE PAST DECADE

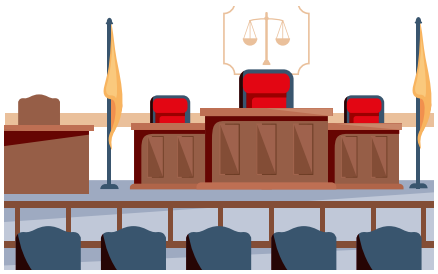
Authored by: Claudia Cheah (Partner) & Karen Tan (Senior Associate) - Skrine

Prior to the Companies Act 2016 ("CA 2016")

Prior to the enactment of the Companies Act 2016 ("CA 2016"), the corporate restructuring and insolvency framework in Malaysia was governed by the Companies Act 1965 ("CA 1965"). Under CA 1965, a financially distressed company had only one formal option for corporate rescue: the scheme of arrangement ("SOA"). While this served as the main avenue for corporate restructuring, its practical application posed several challenges. For instance, there was no automatic moratorium preventing creditors' claims pending the disposal of the SOA. A company in distress has to satisfy stringent requirements (including the appointment of a director nominated by the majority creditors) before the Court would grant an order to restrain creditors' claims against the company. As a result, the winding-up process often became the default insolvency route.

New Corporate Rescue Mechanisms Introduced By The Companies Act 2016

The CA 1965 was repealed by the Companies Act 2016 ("CA 2016"). Two new corporate rescue mechanisms, namely judicial management ("JM") and corporate voluntary arrangement ("CVA") were introduced and came into force on 1 March 2018. This made a paradigm shift in the restructuring landscape in Malaysia.



Judicial Management (JM)

The JM allows a financially distressed company, or its creditors, to apply for an order to place the company under the management of a court-appointed judicial manager. The court must be satisfied that the company is or will be unable to pay its debts, and that the making of a JM order is likely to achieve one or more of the three statutory purposes: the company may survive; there may be a compromise or arrangement reached under section 366 of the Companies Act; or it would result

in a more advantageous realisation of the company assets than on a winding up. Once a JM application is filed, a statutory moratorium automatically takes effect, halting all legal proceedings against the company. This gives the company crucial breathing space to propose and implement a restructuring plan. Such moratorium continues during the duration of the JMO, which is typically granted for a period of 6 months and can be extended for another 6 months. When it was first introduced via the CA 2016, the JM was limited in its application, in that publicly listed companies are excluded from applying for a JM order. As such, when related companies owned by a publicly listed company wish to pursue a global restructuring of the group debts, they would have to resort to a SOA and not a JM.

Corporate Voluntary Arrangement (CVA)

The CVA is modelled on the company voluntary arrangement under the UK Insolvency Act, 1986. It is meant to be a quick and cheap restructuring process with little court intervention.

The CVA is proposed by the directors of a company (which is not under JM and not being wound up) to the company and its unsecured creditors. No court sanction is required for a voluntary arrangement, even after it has been approved by the requisite majority of creditors and members. A moratorium of 28 days (extendable up to 60 days), is triggered upon the filing of relevant documents with the court, providing temporary protection against creditors' actions.

When it was first introduced, the CVA was only available to private companies with no secured debts. Due to such limitations, the CVA was rarely utilised.

The Companies (Amendment) Act 2024: Key Amendments to Malaysia's Corporate Restructuring Framework

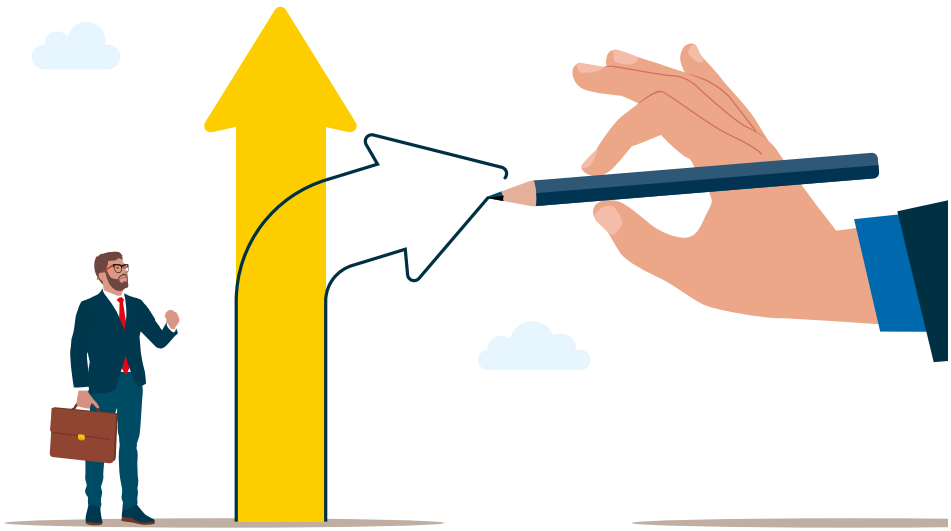
The Companies (Amendment) Act 2024 ("2024 Amendments") was enacted to enhance the effectiveness of Malaysia's corporate rescue framework. In the press release issued by the Companies Commission of Malaysia, it was stated that the 2024 Amendments

"aims to introduce provisions to accord a more comprehensive framework at par with international practices to ensure that scheme of arrangements and compromise could be used as a more effective rehabilitation tool for companies facing financial difficulties".

Key Changes

The CVA process has been made available to publicly listed companies and companies with secured debts. As the CVA process is simple and short, its suitability in restructuring the debts of publicly listed companies remains to be seen. However, extending CVA to companies with secured debts is a positive move, offering small and medium-sized distressed companies a chance to restructure their debts quickly and economically, with minimal court supervision.

Similarly, the JM process has been extended to publicly listed companies. As at the date of writing of this article, one publicly listed company has been placed under interim judicial management. Another change to the JM process is the flexibility given to the Court to extend the duration of the JM order, to such terms as the Court may impose. Such flexibility highlights the growing popularity of JM as a preferred tool for debt restructuring.



In so far as the SOA is concerned, the significant changes brought about by the 2024 Amendments include :-

a) the introduction of a "pre-pack" scheme, whereby the Court may sanction a scheme that has been pre-negotiated and agreed by the requisite majority creditors without a scheme meeting;

b) a new cross-class cram down mechanism, whereby the court is empowered to bind all creditors (including dissenting class of creditors) to a scheme;

c) the related company of the scheme company may also apply for a restraining order, so that it is similarly protected from legal proceedings pending the hearing of the SOA Application by the scheme company;

d) the court may make such orders as deemed necessary, including ordering a revoting, reclassification of creditors and giving directions on the admission and weightage of debts of creditors for the purpose of revoting;

e) An automatic moratorium is triggered by the filing of the SOA application, which lasts for 2 months or until the disposal of the SOA application (whichever is earlier).

Super Priority Financing

Recognising that access to rescue financing is crucial for debt restructuring, the 2024 Amendments allow for the granting of super-priority status to rescue financing provided to a company undergoing either the JM or the SOA process. The Court may grant priority for new financing above preferential debts, authorise new security over previously unsecured assets, or grant security with equal or superior priority over existing charges (with adequate protection for existing creditors).

Contract Termination Restrictions for Essential Services

Another bold change brought by the 2024 Amendments is the statutory restrictions imposed on essential suppliers from terminating contracts for essential goods and services (like water, electricity, and IT services). Suppliers must give a 30-day notice before exercising such termination rights, ensuring that companies seeking corporate rescue (CVA, JM or SOA) can continue to receive vital services to maintain their continuity.

Looking Ahead: Adoption of the UNCITRAL Model Law on Cross-Border Insolvency

Malaysia is poised to join the ranks of countries adopting the UNCITRAL Model Law on Cross-Border Insolvency (Model Law). The Model Law enables foreign insolvency representatives to seek recognition of insolvency proceedings in another jurisdiction, allowing them to access local courts and seek relief—such as a stay of enforcement actions by creditors against assets located within the recognising country.

Adopting the Model Law would mark a significant step forward in aligning Malaysia's insolvency framework with international standards. It would establish a clear and effective legal framework for dealing with cross-border insolvency cases, promote cooperation between Malaysian and foreign courts, and offer greater certainty and protection for international creditors.

Conclusion

Over the past decade, Malaysia has made commendable strides in reforming its corporate restructuring and insolvency laws. From the limited tool under the CA 1965 to the progressive regimes introduced by the CA 2016, and further enhanced by the 2024 Amendments, the legal landscape has evolved significantly. The potential adoption of the UNCITRAL Model Law on Cross-Border Insolvency in the near future represents the next frontier, reinforcing Malaysia's commitment to modernising its insolvency framework and enhancing its global competitiveness.

CRS
CharlesRussell
Speechlys

The right results across borders

No matter which corner of the world you're in, we'll fight to ensure any cross-border dispute can be resolved efficiently and effectively or avoided altogether.

We're driven to achieve a successful outcome for every client – **we know what matters.**

charlesrussellspeechlys.com

London | Cheltenham | Guildford | Bahrain | Doha | Dubai | Geneva | Hong Kong | Luxembourg | Paris | Zurich

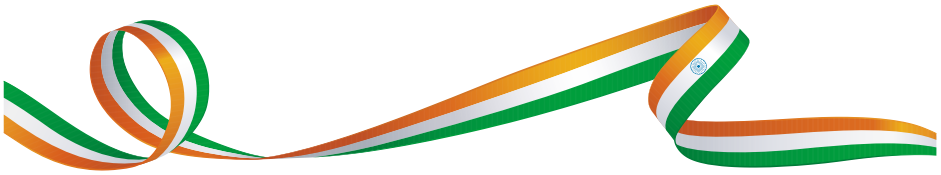
INDIA'S TRYST WITH CROSS-BORDER INSOLVENCY

CHALLENGES, COMMITMENTS AND THE UNCITRAL PATH

Authored by: Pooja Mahajan, (Managing Partner and Head of Insolvency & Restructuring Practice) & Srivatsava Reddy Beerapalli, (Associate, Insolvency & Restructuring Practice) - Chandhiok & Mahajan

Introduction

In today's interconnected global economy, corporate failures rarely respect national boundaries. When transnational corporations collapse, they trigger insolvency proceedings across multiple jurisdictions, demanding international cooperation and coordination to preserve asset value and protect creditor rights. While India has revolutionized its domestic insolvency landscape by passing the Insolvency and Bankruptcy Code, 2016 ("IBC"), at present, the IBC lacks a codified regime for cross-border insolvency. India has also not yet adopted the Model Law on Cross-Border Insolvency in 1997[1] ("MLCBI") proposed by the United Nations Commission on International Trade Law ("UNCITRAL"). As corporate structures span continents and liabilities cross borders, and the need for a comprehensive group insolvency framework under the IBC grows, India is re-evaluating its readiness to engage with international norms, particularly the Model Law, which has seen widespread adoption across major jurisdictions.



The Road So Far

IBC, enacted in 2016, has had a transformative impact on India's stressed asset resolution ecosystem. Once a company is admitted in insolvency under IBC, it moves into the control of a court appointed insolvency professional, who runs the insolvency process under the overall control and supervision of the creditors committee and the jurisdictional National Company Law Tribunal ("NCLT")[2].

While the IBC provides a robust framework for domestic insolvency, there is no particular framework in IBC dealing with cross-border issues that may arise in the insolvency process. Currently, only Sections 234 and 235[3] of the IBC address international insolvency matters, both relying on a reciprocity model.

Section 234 empowers the Indian Government to enter into bilateral agreements with foreign jurisdictions for the purpose of enforcing the provisions of the IBC. Section 235, in turn, permits NCLTs to issue letters of request to foreign courts for cooperation in connection with the insolvency of a debtor with foreign assets or creditors. However, no bilateral agreements under Section 234 have been executed till date.

1 Model Law on Cross-Border Insolvency in 1997 (accessible at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/mlcbi_judicial_perspective_2021_advance_copy.pdf)

2 NCLTs are specialized judicial forums set up for dealing with insolvency and bankruptcy matters.

3 See Section 234 & 235 of the Insolvency and Bankruptcy Code, 2016 (accessible at: https://ibbi.gov.in//uploads/legalframwork/2022-04-28-181717-r28jw-af0143991dbbd963f47def187e86517f.pdf)

Recognition Of Foreign Insolvency Proceedings In India

Despite this legislative void, Indian courts have gradually begun to engage with foreign insolvency proceedings through judicial innovation, common law principles and reliance on certain provisions of Code of Civil Procedure 1908 ("CPC") which generally deal with enforcement of foreign judgments and decrees.[4] This demonstrates a cautious willingness of Indian judiciary to cooperate in cross-border matters.

A turning point came with the Jet Airways case[5] in 2019, where the National Company Law Appellate Tribunal ("NCLAT")[6] facilitated coordination between Indian insolvency proceedings and a parallel Dutch bankruptcy of Jet Airways Limited ("Jet"), despite the absence of statutory guidance[7]. When the Dutch administrator applied for recognition of Dutch proceedings and stay of Indian proceedings, the NCLT refused the recognition. However, in an appeal in NCLAT, the NCLT order was set aside on an assurance that Dutch administrator will not alienate any offshore assets of Jet. The NCLAT also allowed the Dutch administrator to participate in meeting of creditors committee as an observer and directed cooperation between the Dutch administrator and Indian resolution professional. Subsequently, the Indian IP and Dutch administrator devised insolvency protocol for co-ordination based on the Model Law - India was identified as the Centre of Main Interest (COMI) and the Dutch proceedings as non-main proceedings.

There are other cases where civil courts in India have recognized foreign insolvency proceedings basis principles of comity and provisions of CPC. Recently, the Delhi High Court permitted a Japanese bankruptcy trustee of an Indian debtor to file a commercial suit for administration of debtor's properties in India[8]. Similarly, the Telangana High Court, upheld the recognition of Swiss bankruptcy proceedings against an Indian debtor and allowed the buyer of bankrupt's assets in Swiss proceedings to file a suit for partition of the assets in India[9].

In the absence of any clear legislative framework for recognition of foreign insolvency proceedings and coordination between Indian and foreign courts, the Indian courts have been following an ad-hoc approach basis nature of proceedings filed in India. This has led to uncertainty, delays, and in some instances, inconsistent outcomes.

In contrast, jurisdictions like the United States, the United Kingdom, and Singapore have institutionalized cross-border cooperation by adopting the UNCITRAL Model Law, thereby ensuring clarity and predictability in proceedings that span across borders[10].

Global Standard: The UNCITRAL Model Law

In response to the jurisdictional fragmentation that arises in cross-border insolvency, the UNCITRAL adopted the MLCBI to foster cooperation among courts and insolvency administrators across jurisdictions. The MLCBI has since become the gold standard for harmonized insolvency regimes, forming the backbone of cross-border cooperation frameworks in multiple jurisdictions. The MLCBI rests on four foundational principles of access, recognition, relief and cooperation & coordination. Significantly, the MLCBI is designed to be flexible and non-intrusive; it does not override domestic insolvency laws but rather supplements them to deal with cases involving foreign elements.

India has been debating adoption of MLCBI. India's Insolvency Law Committee (ILC), in its 2018 report[11], strongly recommended the adoption of MLCBI with jurisdiction-specific modifications, noting that it would help India integrate into the global insolvency ecosystem without compromising domestic judicial control. In fact, a draft framework—referred to as "Part Z" of the IBC was prepared to incorporate the key provisions of the MLCBI, adapted to Indian realities.

The draft Part Z of the IBC proposes a structured framework for recognition of foreign main and non-main proceedings (with a presumption of COMI as being the place of registered office of the debtor); direct access of foreign representatives to Indian tribunals; relief provisions akin to moratoriums and interim protection and judicial cooperation and communication mechanisms. As of now, Part Z (if enacted) will be applicable only to companies and not to individual debtors. Further, Part Z will be applicable only to those countries that have adopted the Model Law in their domestic legislation.

Conclusion

The draft Part Z of the IBC, based on the Model Law, has received strong institutional backing and positive industry response. However, the legislative action on the proposal remains pending as of 2025.

India's hesitation in adopting a formal cross-border insolvency regime is not due to conceptual resistance, but to structural and political caution. However, in an age where capital, debt, and corporate structures flow freely across borders, waiting for reciprocal arrangements or relying on ad hoc judicial innovation is no longer tenable. The time is ripe. India has already demonstrated institutional maturity in implementing the IBC domestically. It must now elevate that success into the global insolvency domain, balancing comity with control and coordination with sovereignty.

4 Section 13 of the CPC lays down conditions, basis which a foreign judgment by competent court can be considered conclusive as to the matters set out therein. Section 44 of the CPC provides for enforcement of foreign decrees passed by courts of certain reciprocating territories.
5 Jet Airways (India) Ltd (Offshore Reginal Hub/Offices Through its Administrator Mr. Rocco Mulder) v State Bank of India & Anr Company Appeal (AT) (Ins) No. 707 of 2019
6 NCLAT is an appellate forum for appeals against the orders of the NCLT
7 While Jet was incorporated in India and had main operations in India, it had some offshore assets in The Netherlands.
8 Toshiaki Aiba as Bankruptcy Trustee of the Estate of Vipan Kumar Sharma v Vipan Kumar Sharma and Another, CS(Comm) No. 1136 of 2018 decided on 2 May 2022
9 Mahmood Hussain Khan v Madam Canisia Ceizar, CCCA No. 47 of 2021 decided on 24 March 2023
10 US Bankruptcy Code, Title 11, Chapter 15; Cross-Border Insolvency Regulations 2006 (UK); Insolvency, Restructuring and Dissolution Act 2018, Part 11 (Singapore)
11 Report of the Insolvency Law Committee, March 2018 (accessible at: https://ibbi.gov.in/ILRReport2603_03042018.pdf)

Control Risks

Multi-disciplinary investigation and dispute support

Control Risks' investigation, forensic accounting, business intelligence and forensic technology professionals support organisations and their legal advisors assess litigation prospects, establish facts and pursue settlement and recovery. The successful resolution of a legal action or regulatory matter can hinge on the quality of the information held, and we can assist with gathering and analysing evidence for a range of proceedings, from regulatory, to civil, to criminal actions.

With 35 global offices and more than 200 professionals dedicated to investigations, litigation and dispute resolution, we have an unrivalled track record in serving clients wherever they do business. Our experience in international markets and our network of in-country contacts make us global leaders in investigative analysis and complex problem-solving. Clients benefit from our global technological infrastructure, including digital forensics experts and data centres across the Americas, Europe, the Middle East, Africa, and Asia Pacific.

controlrisks.com

60 SECONDS WITH...
FRANCISCO PATRÍCIO
PARTNER
ABREU AVOGADOS / IFG

Q Imagine You No Longer Must Work. How Would You Spend Your Weekdays?

A I would dedicate my time to classical music appreciation and meaningful societal impact projects. As I have seen by participating in complex insolvency cases, I've developed a passion for initiatives that strengthen our collective social fabric and governance structures.

Q What Do You See As The Most Important Thing About Your Job?

A The cornerstone of my practice is building sustainable businesses and navigating the delicate negotiations between stakeholders during financial distress. Having helped build a 32-year-old law firm from its foundation, I remain committed to developing an institution that transcends its founding partners. I want to continue to work in this institution and contribute to being a place where everyone can feel good and proud of the work done here.

Q What Motivates You Most About Your Work?

A My greatest motivation is helping businesses transform into more sustainable and profitable entities by establishing robust governance structures that prevent fraud. When we successfully restructure a troubled company with transparent controls and accountability measures, we are contributing to creating growth and expansion opportunities, giving a new chance in the business world to our clients.

Q What Is The Most Significant Trend In Your Practice Today?

A The most transformative trend is the accelerating integration of technology and AI in fraud detection and prevention, fundamentally changing business operational models. Simultaneously, disputes increasingly revolve around ESG concerns and data/cybersecurity issues—both areas where sophisticated fraud schemes are emerging as significant threats to corporate integrity and shareholder value.

Q How Do You Deal With Stress In Your Work Life?

A Stress is inherent in litigation and restructuring work, particularly when investigating potential fraud scenarios with significant consequences for all stakeholders. While this pressure can sharpen focus when handling complex cases, I maintain balance through regular athletic activities and deliberately disconnecting during weekends.

Q What Has Been Your Most Memorable Experience During Your Career So Far?

A Doing the turn-around of a very relevant group of companies that took more than 2 years to close with almost 100 % dedication of my team.

Q If You Could Give One Piece Of Advice To Aspiring Practitioners In Your Field, What Would It Be?

A Build a strong academic foundation and develop impeccable time management skills. Most critically, exercise precision and thoughtfulness in all client communications, responding promptly but never hastily. The clients need timely & measured counsel and the worst thing that you could do is leave a client without an answer.

Q If You Could Start All Over Again, What If Anything Would You Do Differently?

A I would complement my legal education with a degree in Economics and learning piano!

Q Do You Have A Favourite Food?

A I favor freshly caught fish from the Azores paired with local farm vegetables. In other words, I really like to enjoy local and fresh food and the nature that surrounds it. Ah and with a very dry white and fresh Douro wine.

Q What Brings You The Most Joy?

A Quality time in the countryside with my immediate family provides the greatest joy in my life.

We are the International Fraud Group

The International Fraud Group ("IFG") is a network of international lawyers who are experts in Asset Recovery and Fraud Investigation.

We have members spanning over 56 jurisdictions and we cover the globe.

In 1994 a Bank that Mishcon de Reya were working for in the international recovery space expressed a need to access like minded and similarly skilled lawyers across the globe to help them when their and their client's assets had gone astray. The IFG was born in response to that need.

The ethos of the IFG is based on responsiveness, know how and commerciality.

In the Asset Recovery & Fraud Investigation space there is no time to lose when a problem is discovered. Sometimes injunctions are needed on an immediate basis. IFG's members know that every second is valuable when chasing crooks and understand that responsiveness is critical.

There is a huge difference between knowledge and know how. It is the practical application of the law to get a result that the client wants which is at the very core of the IFG.

Knowing what to do and how to do it is not enough. What lawyers in this space need to understand is that clients want and are right to insist on a return on their investment. The costs that a client incurs in an Asset Recovery scenario and/or Fraud Investigation represent an investment. IFG Members know that to justify their existence they must produce a return on that investment in terms of funds or assets recovered.

The IFG also has in-depth expertise in the following sectors which are represented by 5 sub-groups namely Crypto Currency, White Collar Crime & Investigations, Arbitration, Shipping and Insolvency.

Contact:

Gary Miller
Partner, Mishcon de Reya LLP
T +44 20 3321 6294
E gary.miller@mishcon.com

Our sponsors

CENTRAL

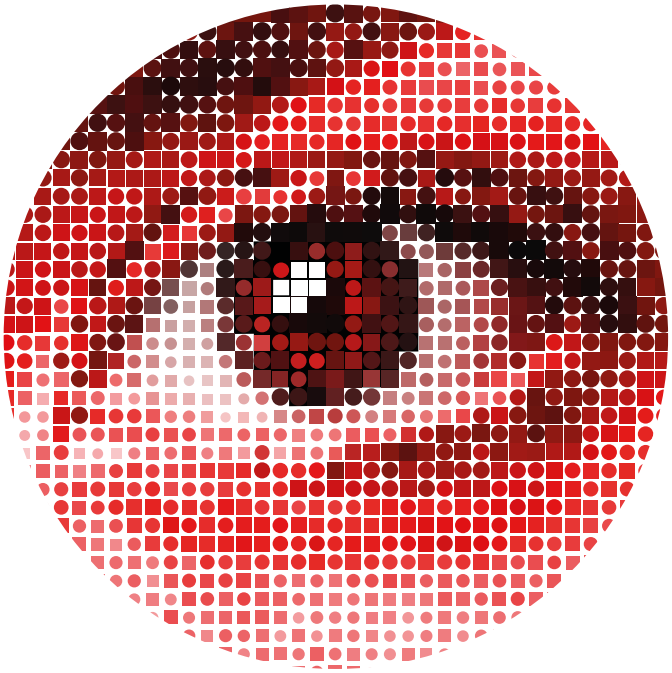
Grant Thornton

Mann & Associates PAC
Chartered Accountants of Singapore
a Network Firm of KRyS Global

Queen Mary University of London

Traffik Analysis Hub

STOP THE TRAFFIK



We freeze.
We seize.
We recover.

FIRE Middle East 2025

Bringing together the key regional players in the asset recovery space for the 5th year

9 - 11 November 2025

Shangri-La Hotel, Dubai, UAE

For partnership enquiries please contact:

Ben Sullivan on +44 (0) 20 3965 4386 or
email ben@thoughtleaders4.com

A GATEWAY FOR GLOBAL BUSINESS

QATAR'S ENHANCED ENFORCEMENT MECHANISMS FOR CROSS-BORDER JUDGMENT AND ARBITRAL AWARD

CORPORATE PARTNER

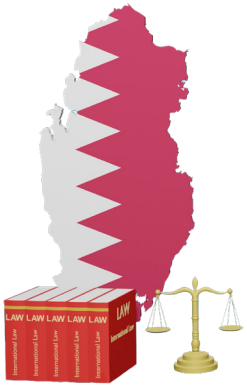
IFG

Authored by: Gary Miller (Partner), Rhymal Persad (Partner) & Barry Coffey (Partner) - Mishcon de Reya / IFG

Introduction

In an increasingly interconnected global economy, the enforcement of foreign judgments and international arbitral awards has become a cornerstone of international legal practice. For Qatar, a nation strategically positioned as a gateway for global business, the modernization of its legal framework to facilitate cross-border enforcement is both a necessity and a reflection of its commitment to fostering a business-friendly environment.

This article delves into Qatar's legislative advancements and practical challenges in enforcing foreign judgments and arbitral awards, offering a dual perspective that balances legal rigor with commercial pragmatism.



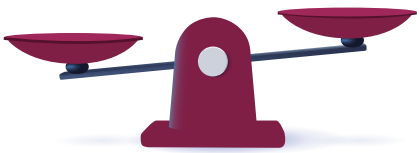
Qatar's Legal Framework for Enforcing Foreign Judgments

Qatar's approach to enforcing foreign judgments is codified in the Civil and Commercial Procedural Act No. 13 of 1990, particularly Articles 380 to 383. These provisions outline the conditions under which foreign judgments may be recognized and enforced, ensuring alignment with international standards while safeguarding Qatari public policy.

Key Requirements Under Article 380

Article 380 stipulates four prerequisites for enforcing foreign judgments:

- **Jurisdictional Competence:** The foreign court must have had jurisdiction over the dispute, and Qatari courts must not have had exclusive jurisdiction.
- **Due Process and Representation:** The litigants must have been duly summoned and represented.
- **Finality:** The judgment must have attained res judicata status under the issuing court's laws.
- **Consistency with Public Order:** The judgment must not conflict with Qatari public policy or prior Qatari judgments.



Analysis of Due Process in Absentia Judgments

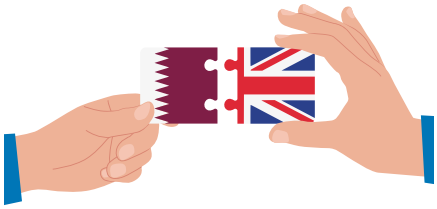
A critical issue arises when a judgment is issued in the absence of opposing party. Under Article 380, the losing party must have been properly summoned and represented. If this condition is unmet, the judgment is unenforceable in Qatar.

This requirement underscores Qatar's commitment to procedural fairness, even in cross-border disputes. However, it also poses challenges for creditors seeking to enforce judgments where the debtor deliberately avoids participation in foreign proceedings.

Procedural Requirements for Enforcement

Enforcing foreign judgments in Qatar involves two key procedural steps:

- **Attestation:** The judgment must be authenticated by the Qatari embassy in the issuing country and the foreign country's Ministry of Foreign Affairs.
- **Translation:** All documents must be translated into Arabic by a certified translation company in Qatar.



Bilateral and Multilateral Conventions

Qatar has entered into several bilateral and multilateral conventions to streamline the enforcement of foreign judgments. These conventions reflect Qatar's proactive approach to harmonizing its legal framework with regional and international standards.

Notably, the Gulf Cooperation Council (GCC) Convention on the Enforcement of Judgments, Judicial Delegations, and Judicial Notifications (1996) facilitates mutual recognition and enforcement of judgments among the Gulf Cooperation Council (GCC) Member States.
This convention enhances judicial cooperation, particularly in civil and commercial matters, by:

- Allowing enforcement of judgments across GCC borders.
- Simplifying judicial delegations and notifications.

Qatar's Legal Framework for Enforcing International Arbitral Awards

Qatar's Arbitration Act No. (2) of 2017, particularly Article 35, governs the recognition and enforcement of international arbitral awards. This framework aligns with the New York Convention (1958), to which Qatar has been a party since 2002. Article 35 delineates the grounds for refusal of recognition or enforcement.

Grounds for Refusing Enforcement

Article 35 outlines specific grounds for refusing enforcement, mirroring the New York Convention:

- **Invalid Arbitration Agreement:** The agreement is invalid under the governing law, or a party lacked capacity.
- **Due Process Violations:** A party was not properly notified or unable to present its case.
- **Exceeding Arbitral Authority:** The award addresses matters beyond the arbitration agreement.
- **Procedural Irregularities:** The tribunal's composition or procedures violated the parties' agreement or applicable law.
- **Award Set Aside:** The award has been annulled or stayed in the issuing jurisdiction.
- **Court's Own Motion:** enforcement may also be refused if the dispute is non-arbitrable under Qatari law or enforcement would contravene public policy.

Practical Implications

While Qatar's arbitration framework is robust, enforcement is not automatic. Courts may adjourn proceedings if the award is subject to setting aside in the issuing jurisdiction. Moreover, the requirement to provide suitable security can impose financial burdens on parties seeking enforcement. Further, the decision of refusal can be appealable within thirty (30) days from the date such decision is issued.

Enforcement vs. Execution: Why Recognition of Awards Doesn't Always Guarantee Recovery

Despite legislative advancements, practical challenges persist in enforcing foreign judgments and arbitral awards in Qatar.

Assets Location and Ownership:

Enforcement is contingent on the debtor having assets within Qatar, such as bank accounts, shares, or movable property. The judgment or award is enforceable only against the named individual or entity.

For foreign entities without a local presence, enforcement may prove futile, highlighting the importance of pre-dispute due diligence.

It is also worth considering that the principles established by the Qatari Court of Cassation have affirmed the legal capacity of a branch of a foreign company to litigate, in contrast to the lack of such capacity if the branch belongs to a national company. This distinction is vital for enforcement against foreign entities operating in Qatar.

Qatar's Enforcement Regime: A Dual Lens of Progress and Persistent Challenges

Qatar's legal framework has made significant strides in aligning with international best practices. However, practical challenges remain.

Public Policy Considerations

Qatari courts retain broad discretion to refuse enforcement on public policy grounds. This flexibility, while protecting national interests, demands a well knowledge of the public policy considerations and the legal framework through cassation's judgments in the State of Qatar.

Moreover, when a foreign judgment does not contravene Qatar's public policy, seeking expert legal advice-particularly from a law firm specializing in international dispute resolution-becomes imperative to navigate enforcement procedures, as public policy considerations demand meticulous case-by-case examination.

Asset Tracing

Locating and securing assets within any country is typically a challenging endeavor, especially within complex corporate structures. However, in the State of Qatar, this process proves notably smoother compared to many nations worldwide-thanks to the country's monumental technological advancements, which enable seamless and precise asset tracking. This efficiency stems from multiple factors, including Qatar's compact geography and manageable population size, both of which contribute to faster asset accessibility.

Bridging Sovereignty and Commerce: The Way Forward

Qatar's legal system stands as a testament to the nation's unwavering commitment to balancing sovereign integrity and national interests with the demands of a globalized economy. Qatar has positioned itself as a regional hub for international business and arbitration; it has proactively addressed challenges in enforcing foreign judgments by modernizing enforcement mechanisms, aligning with global developments, and enacting flexible laws such as the Judicial Execution Law to overcome implementation hurdles. This dynamic legal landscape reflects the agility of Qatari courts in conformity with international conventions to facilitate cross-border judgment enforcement, asset tracing, and security with remarkable efficiency."

Beyond these considerations, technological assets-particularly cryptocurrencies that defy easy traceability-represent one of the most formidable challenges facing nations today. Qatar is one of the reserved countries for codifying cryptocurrencies now. However, if Qatar legalized cryptocurrencies, it may encounter serious challenges in this regard, such as the smuggling of assets by making them digital assets that are difficult to trace, and this is a problem that is currently being faced by most of the world's countries.

Conclusion

The enforcement of foreign judgments and arbitral awards in Qatar is a dynamic interplay of legal principles and practical realities, requiring meticulous adherence to procedural requirements and a thorough understanding of the legal landscape. While legislative developments reflect Qatar's alignment with international standards, diligence, meticulous documentation, and strategic asset tracing are crucial to navigate the complexities of cross-border enforcement and essential for successful cross-border recovery in this dynamic market.

Sources:

Qatar Civil and Commercial Procedural Act, Article 380

Qatar Arbitration Act No. (2) of 2017, Article 35

GCC Convention on the Enforcement of Judgments

New York Convention (1958)

Qatari Court of Cassation Rulings

HARNESSING AI FOR ASSET TRACING

A PRACTICAL APPROACH

Authored by: Saffa Ahmed (Senior Managing Investigator) - Mintz Group

Generative artificial intelligence is dramatically reshaping asset tracing around the globe—and the Middle East and North Africa is no exception. AI, with its ability to quickly analyse large amounts of data, is helping lead to recoveries that are faster, larger, and more cost effective. AI-driven investigative tools are particularly well suited to the challenges of asset tracing in the region. At the same time, optimal use of AI depends on properly integrating it with human-led processes. This integration requires an understanding of AI's strengths and limitations, as well as the contours of the investigative workflow. A recent case study helps illustrate these points.

Case Study: A Non-performing Debtor

A bank was faced with a sizable non-performing loan made to a large regional business and personally guaranteed by the business' CEO. We were instructed by the bank to help it assess the recovery possibilities by investigating the state of the business and by identifying the guarantor's assets and physical footprint.

The challenges to this sort of assignment are well known to those involved in asset tracing in the MENA region. There are limited public records and a lack of robust disclosure requirements, and while several countries in the region are making substantial investment in AI infrastructure, on the investigative front lines, information remains largely in analogue form. As a result, investigators must largely rely on what can be gleaned through open-source intelligence and enquiries made to expert legal and financial practitioners, suppliers, business partners, former employees and others. In practice, the piecing together of such open-source resources is time-consuming—a significant problem in asset tracing, where success depends on speed—and is susceptible to inconsistencies and overlooked connections.

Using AI tools especially developed for due diligence, asset tracing and similar tasks, we were able to quickly construct, for both the business and the guarantor, a timeline of developments related to their current status and activities, established business networks and other background information. This did not tell us everything we needed to know, but it gave us a strong foundation from which to begin making enquiries, conducting site visits and tracking down analogue records. The information we gleaned from those inquiries fuelled subsequent rounds of AI-driven research. We soon discovered that the business was rumoured to be facing restructuring, and numerous banks and suppliers were pursuing litigation over unpaid loans and invoices. We also learned that the personal guarantor had fled to his hometown and sold and/or transferred personal property to his children and proxies. The information

we gathered helped the bank we advised to refine its asset recovery strategy and to place greater emphasis on pursuing the guarantor's assets through targeting family members and proxies, and in other jurisdictions.

Principles for Successful AI Integration

This case study illustrates a fundamental principle underlying the use of AI: It should act as an extension of, rather than a replacement for, the abilities of an expert investigator. The following guidelines provide practical insight to help take that holistic approach.

Use AI Iteratively

AI platforms can provide a rich initial screen on a subject and can be particularly valuable for tasks such as mapping complicated fund flows. But AI really shines when it is used iteratively. After the initial AI-generated profile enabled our investigators to begin gathering more information through enquiries and site visits, we returned to our AI platform with what we had learned to explore hunches and test hypotheses—which would then launch further rounds of on-the-ground investigation and AI refinement.

Think Through The Prompt

The quality of the prompt greatly affects the quality of the output. The more generic the query, the higher the probability of false positives. Further, you can maximise the usefulness of the query by specifying the form of the output. If you need the output as a table or as a narrative written as an investigative reporter might, then specify accordingly. Work backward from the desired result.

Take A Step Back

Before you can optimally integrate AI into your investigative workflow, you need to understand your workflow. This can be harder than it sounds, as processes and procedures naturally evolve over time to reflect accumulated practical knowledge. Leveraging AI can be an occasion for organisations to make a larger, objective examination of how they work, and then from there, how AI can best fit into that picture.

Have A Long-Term Perspective

AI's capabilities will change dramatically in the coming years, as will relevant regulations, best practices and awareness of risks. The larger data landscape, both in the MENA region and globally, will also evolve. Organisations that embrace AI should ensure that they commit resources not just for the technology itself, but for building a long-term infrastructure for AI governance and management.

AI will continue to transform asset tracing, especially given the recent advancements in Agentic AI solutions with better reasoning and iterating capabilities. But getting the most out of AI's possibilities means more than adopting a new technology—it requires making AI an integral part of the asset tracing process and working with expert asset tracing investigators that have adopted this new technology; and you will still need humans to build relationships with other humans to gather and develop non-public information. Organisations that take a holistic approach to doing so are likely to have a competitive advantage in the race to asset recovery.

COOKE, YOUNG & KEIDAN

COMMERCIAL DISPUTES LAWYERS

"More of a powerhouse than a boutique these days" (Legal 500)

CYK's team of tenacious, innovative and personable lawyers is delighted to support TL4

Jon Felce
PARTNER

Founding Committee Member, FIREStarters nextgen community

Mob: +44 (0)7769 316 592
Email: jon.felce@cyklaw.com

CV here

Natalie Todd
PARTNER

Founding Committee Member, Disputes nextgen community

Mob: +44 (0)7879 018 014
Email: natalie.todd@cyklaw.com

CV here

TWO UNIQUE EVENTS AT THE SAME VENUE OVER TWO CONSECUTIVE DAYS

FIRE Americas

22-23 September 2025
Washington, D.C., USA

Sovereign & States Litigation Summit USA

23-24 September 2025
Washington, D.C., USA

Maximise your time to Washington, D.C., through attending both events!

Together, these events will draw a diverse group of litigation and disputes lawyers specializing in enforcement, arbitration, disputes and asset recovery. This unique scheduling provides the perfect opportunity to meet the right professionals at each event and expand your network across both gatherings. Don't miss this chance to connect and collaborate.

TIANRUI V SHANSHUI

PRIVY COUNCIL AFFIRMS SHAREHOLDERS' PERSONAL RIGHT TO SUE FOR IMPROPER SHARE ALLOTMENT

Authored by: Wilson Leung (Barrister) - Serle Court

This article examines the Privy Council's decision in Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd [2024] UKPC 36, which affirms that a shareholder has a personal right of action to challenge an improper share allotment, even though the directors' fiduciary duty to act for a proper purpose is owed to the company (rather than shareholders). The judgment provides – for the first time at the appellate level – a principled justification for this right, grounding it in the 'corporate contract' between shareholders and the company, as constituted by the memorandum and articles of association. This decision is likely to have material implications for shareholders' rights more broadly, as the Privy Council's analysis based on the corporate contract could well be applicable to other breaches of fiduciary duties committed by directors.

Introduction

In Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd [2024] UKPC 36, the Privy Council (on appeal from the Cayman Islands) delivered an important ruling clarifying the right of shareholders to challenge share allotments that are effected by the directors for an improper purpose. The decision confirms that shareholders who have been prejudiced by such an allotment have a personal right to sue the company, notwithstanding that the directors' fiduciary duty to exercise their powers for a proper purpose is owed to the company (rather than the shareholders).

Background

The plaintiff (Tianrui) was a 28.16% shareholder in China Shanshui Cement Group Ltd (Shanshui), a Cayman-incorporated company listed in Hong Kong. The dispute arose when Shanshui's board issued convertible bonds and allotted shares to investors allegedly linked to two of its major shareholders. Tianrui claimed that these issuances were not genuine capital-raising measures but were instead designed to dilute its shareholding below 25%, thereby stripping it of its ability to block special resolutions. Tianrui issued proceedings against Shanshui in the Cayman courts seeking declaratory relief that the board had improperly exercised its power to issue and allot securities.

Shanshui applied to strike out the claim on the ground that Tianrui, as a shareholder, did not have standing to bring a personal action against Shanshui. Shanshui's strike out application was dismissed at first instance, but allowed by the Cayman Court of Appeal, which held that only the company – and not individual shareholders – had a cause of action to challenge the directors' conduct.

Privy Council's decision

The Privy Council (with Lord Hodge DPSC and Lord Briggs JSC giving the judgment) reversed the Court of Appeal's decision, affirming that a shareholder does have a personal right of action to challenge a share allotment which was effected by the board for an improper purpose and which has caused detriment to the shareholder (e.g. dilution of his voting power).[1] The strike out application was therefore dismissed.

1 [4]

Shareholders' personal right of action

The Court of Appeal had based its decision on the "proper plaintiff" principle,[2] i.e. that where a wrong has been done to a company, it is only the company (and not individual shareholders) which can take action. The Court of Appeal reasoned that, even if Shanshui's directors had allotted shares for an improper purpose, that was a breach of duty owed to the company, and therefore the company was the only proper claimant. This meant that a shareholder could only assert the company's claim by way of a derivative action.

However, as the Privy Council pointed out[3], the proper plaintiff principle is only part of the picture. The courts have long recognised that a shareholder has certain personal rights against a company which it can enforce by a personal action. Of particular relevance is a long line of cases in England and Australia in which the courts have allowed shareholders to bring personal claims (as opposed to derivative actions) to challenge share allotments effected for an improper purpose.[4]

Shanshui contended that, in those previous cases, the courts had not explained the juridical basis of the shareholders' locus standi. In response, the Privy Council explained[5] the matter from first principles: the juridical basis was to be found in the 'corporate contract' between shareholders and the company, as constituted by the memorandum and articles of association. It is implicit in the contract that the company's power to allot shares would be exercised by the directors on behalf of the company in accordance with their fiduciary duties. The directors' improper exercise of that power is actionable by a shareholder because the impropriety contravenes the corporate contract binding the shareholder and the company.

As Lord Hodge DPSC and Lord Briggs JSC explained:[6]

'Although the action is founded upon the fact of the commission of a breach of fiduciary duty by the directors, the cause of action is that the contract between the shareholder and the company contains the implied term that, in exercising the power to allot and issue shares, the directors as the company's agents will do so in accordance with their fiduciary duties.'

Specifically, this term is implied as a "necessary legal incident" of the relationship between a shareholder and a company, and between the shareholders inter se.[7]

Shareholders' claim can co-exist with company's own cause of action

The Privy Council highlighted[8] that it is irrelevant whether or not the company itself has a cause of action against the directors for breach of fiduciary duty. The Privy Council rejected the argument that a shareholder's claim should be barred simply because the company itself could sue the directors; the two actions are not mutually exclusive.

Size of shareholding irrelevant

The Privy Council further noted[9] that the size of the shareholder's shareholding is irrelevant to whether the shareholder has a personal right of action. In other words, it does not matter whether the shareholder is a minority or majority shareholder. What is important is that the shareholder has suffered from an interference with his right as shareholder, brought about by the improper share allotment. An example of where majority shareholders had a personal cause of action was Howard Smith v Ampol[10], where the directors issued shares to an outside party with the improper purpose of destroying the majority shareholders' 55% control.

Conclusion

Although the Tianrui decision arose in the context of Cayman law, it has significant consequences for England and other common law jurisdictions. Critically, it provides (for the first time at the appellate level) a principled explanation for a shareholder's personal right of action to challenge an improper share allotment that has harmed his position – namely, that it is founded on the corporate contract between the company and the shareholders, which includes an implied term that the directors will exercise their power to allot shares in accordance with their fiduciary duties.

The judgment is also likely to have material implications for shareholders' rights more broadly. The Privy Council's analysis based on the 'corporate contract' could well be applicable to other breaches of fiduciary duties committed by directors, with the consequence that a shareholder who has been harmed by such a breach would have a personal right to sue, rather than being compelled to pursue his remedy by way of an 'indirect' cause of action (such as a derivative claim, unfair prejudice proceedings, or a just and equitable winding up petition). It will be interesting to see how the courts continue to develop this line of jurisprudence.

2 originating from Foss v Harbottle (1843) 2 Hare 461
3 [40]
4 e.g. Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821; Hogg v Cramphorn Ltd [1967] Ch 254; Ngurli Ltd v McCann (1953) 90 CLR 425
5 [70]-[74]
6 [75]
7 [76]
8 [79]
9 [77]-[78]
10 [1974] AC 821

PAYNE HICKS BEACH

EST . 1770

"The best boutique practice in London. Wonderfully collaborative and technically superior to all its rivals."

"Payne Hicks Beach operates at the intersection where a law firm steeped in history meets an innovative and dynamic team with bucketloads of commercial acumen."

LEGAL 500 UK

- Fraud and asset recovery
- Contentious insolvency and financial services
- Shareholder, company and partnership disputes
- Conflict free

Payne Hicks Beach LLP is a firm of solicitors who take pride in building strong client relationships based on trust, integrity and the vision to succeed.

PAYNE HICKS BEACH

WWW.PHB.CO.UK

SHANG PENG GAO KE, INC SEZC V OFFICIAL LIQUIDATOR OF HEC INTERNATIONAL LTD[1]

THRESHOLD FOR GRANTING LEAVE TO BRING PROCEEDINGS AGAINST COMPANY IN LIQUIDATION

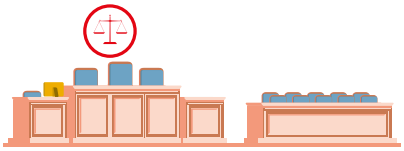
Authored by: Andrew Ayres KC (Barrister) & Thomas Wong (Barrister) - Twenty Essex

Introduction: Factual Summary and Issues

Ascentra Holdings, Inc ("Ascentra"), and its subsidiary HEC International Ltd ("HEC"), were each a Cayman exempted company in voluntary liquidation.[2] This case concerned Shang Peng Gao Ke Inc SEZC ("SPGK")'s assertion of a proprietary claim against HEC for US$25,800,000, known as the "HEC Funds": SPGK said that they had been paid on its behalf for a "specific purpose" to pay loyalty bonuses for Ascentra, but Ascentra's payment of those bonuses had ultimately been satisfied elsewhere, so in law SPGK had retained the beneficial interest in the HEC Funds.[3]

HEC's official liquidator ("OL")'s position was that SPGK was not even a creditor of HEC, but, for the purposes of these proceedings, agreed to isolate the proprietary claim.[4] The OL required SPGK to file a fresh summons seeking leave under section 97 of the Companies Act (2023 Revision) ("CA").[5]

At first instance, Doyle J ruled that SPGK was required to proceed under section 97 and that it had no genuinely arguable case.[6] The Cayman Islands Court of Appeal ("CICA") therefore had to resolve two issues: whether SPGK: (1) needed leave to appeal; and (2) should have sought (a) to establish its proprietary claim in its appeal against the Notice of Rejection, or (b) leave under section 97, and, if (b), whether leave should have been given.



No Leave to Appeal was Required

The CICA held that, pursuant to section 6(f)(v) of the Court of Appeal Act (2023 Revision), even if Doyle J's judgment refusing leave for SPGK to pursue its proprietary claim had been interlocutory (which it was not), no leave was required.[7] And, here, Doyle J's order had been a final decision, since it had disposed of SPGK's proprietary claim, and finally determined its free standing application for permission to pursue its claim against HEC outside the liquidation.[8]

1 CICA (Civil) Appeal 17 of 2023, 19 June 2024. Unless otherwise stated, all paragraph references in these footnotes are to this Judgment.
2 §1.
3 §3.
4 §4.
5 §9.
6 §11.
7 §19, 24.
8 §20.

Leave was Required under CA Section 97

The CICA concluded that SPGK's proprietary claim had to be brought in separate proceedings, leave for which was required under CA section 97, because it was incapable of proof in HEC's liquidation. A creditor relying on a security or claiming as a beneficiary were both claiming that the property in issue was outside the liquidation estate and hence unavailable as a dividend to the creditors generally. Thus a claim to that property was adverse to the liquidation and had to be brought in separate proceedings.[9] Indeed, the only means for determining a proprietary claim where the OL contended that it was unarguable and did not agree to any alternative procedure, was by proceedings under section 97(1).[10]

Should Leave be Granted?: A "Genuinely Arguable Case"

The CICA recalled that the threshold test for granting leave under section 97(1) was whether SPGK had demonstrated a "genuinely arguable case": "[t]he adverb is of importance since it is the regular experience of all courts that anything may be argued, however fallacious."[11] But precisely because the threshold was that, the Court stressed the exercise "does not and should not involve findings of fact. It is a matter of assessment…. Contested evidence should not be resolved before full discovery, and before an opportunity has been afforded to give oral evidence and to be cross-examined."[12] By the same token, "if resolution of the issue of whether the case is genuinely arguable depends, at least in part, on credibility, then it is wrong to deprive a party of an opportunity of establishing to the satisfaction of the court that it is telling the truth."[13]

Applying these principles here, the CICA held that Doyle J's "repeated references to the credibility of Mr Yoshida [SPGK's director and principal witness] tends to show that the Judge himself took the view that the case turned on Mr Yoshida's credibility", in which case "it was wrong as a matter of law for the Judge to make a determination without giving Mr Yoshida the opportunity to be heard."[14] In particular, "the Judge's conclusion that the claim was incredible and invented was wrong in law."[15] Neither was Doyle J's criticism "that the 'generalised' statements of Mr Yoshida were self-serving and were unsupported" justified: "[o]f course they were"; "[t]here was no legal requirement for documentary proof, and it is not impossible to conceive of an arrangement in which funds loaned by SPGK were not at the free disposal of HEC even absent any supporting document or confirmatory exchange of emails, in the circumstance that Mr Yoshida was director of both SPGK and HEC and a co-director of Ascentra."[16] Further, the CICA regarded as material that "[the] circumstance [that HEC was dormant] might arguably establish that the loans were made for that one exclusive purpose",[17] and that "shortly before this appeal was heard, Ascentra issued an amended writ making proprietary and fiduciary claims in relation to other funds claimed by SPGK against Mr Yoshida and SPGK as defendants", which "is or may be relevant to… whether SPGK was a creditor of HEC, and… the proprietary claim".[18] For these reasons, the CICA allowed the appeal and granted SPGK section 97(1) leave to pursue its proprietary claim.

Conclusion: Key Takeaways

The CICA's decision makes clear that an applicant for leave to bring proceedings against a company in liquidation must show a "genuinely arguable case", no more, no less. But unless it is "clear beyond question that the [applicant's] statement of facts is contradicted by all the documents or other material on which it is based",[19] both the respondent company and the Court would do well to remember that (not unlike getting leave to defend at a summary judgment application, or surviving a strike-out application) "questions of credibility and implausibility are beside the point",[20] and "[i]t is… important not to equate what may be very powerful cross-examination ammunition, with… [a] 'knock-out blow'".[21] To indulge in an extensive attack on credibility, implausibility, and/or even the apparent lack of supporting documentary evidence in circumstances where the claim could genuinely be established without it, would run the risk (as HEC's OL did in this case) of "merely add[ing] to costs and [delay in the] resolution of the substantial issue". [22]

9 §35.
10 §43.
11 50.
12 §60.
13 §62.
14 §75.
15 §77.
16 §§75, 81.
17 §92.
18 §95.
19 Three Rivers DC v Bank of England (No 3) [2003] 2 AC 1 (HL), §95, cited in §60.
20 §87.
21 Mentmore International Ltd v Abbey Healthcare (Festival) Ltd [2010] EWCA Civ 761, §23, cited in §60.
22 §97.

TWENTY ESSEX

Expert advocacy in complex civil fraud

UNITED KINGDOM
20 Essex Street
London WC2R 3AL

enquiries@twentyessex.com
+44 20 7842 1200

SINGAPORE
28 Maxwell Road
#02-03 Maxwell Chambers Suites
Singapore 069120

singapore@twentyessex.com
+65 62257230

twentyessex.com

WINNER
LEGAL BUSINESS AWARDS 2023
CHAMBERS OF THE YEAR

A modern barristers' chambers, leading by example.

PCB BYRNE

Internationally known as true specialists in investigating and advising on fraud, asset recovery, insolvency and commercial disputes.

Extraordinary Problem Solvers

Proud to support FIRE.
Experts at putting out fires…

"The April 2021 merger of PCB Litigation LLP and Byrne & Partners saw 'two top tier boutiques join forces' to form the market leading civil fraud practice of PCB Byrne", according to the Legal 500 United Kingdom 2022 edition.

PCB Byrne provides in-depth expertise and unparalleled service having decades of experience in dealing with complex UK and international disputes in the civil, criminal and regulatory sectors. PCB Byrne is a conflict-free firm delivering creative and commercially focused solutions. PCB Byrne builds the best bespoke teams for clients, whilst retaining its commitment to exceptional, hands-on service.

We are delighted to be part of the FIRE community and look forward to helping this next generation initiative grow from strength to strength.

> "…some of Britain's most sought after lawyers"
>
> (The Times, 2021)

PCB BYRNE

1 Plough Place, Holborn
London EC4A 1DE

020 7842 1616
pcb-byrne.com

Contact us at: info@pcb-byrne.com

60 SECONDS WITH... SEAN MCGUINESS INVESTMENT MANAGER OMNI BRIDGEWAY

Q What Motivates You Most About Your Work?

A It is always exciting to get a new opportunity funded – the lead up to that is often quite long, with a lot of stakeholder management, imaginative thinking and long negotiations so the challenge of bringing all that together to success is a real motivator. The obvious one of course is the effect that our funding can have in levelling the playing field – bringing that intellectual capital plus real capital to achieve a fair outcome is the real long-term motivator.

Q What Do You See As The Most Important Thing About Your Job?

A People often forget that as a funder I am caught in the middle of two stakeholders. On the one hand we have clients that are seeking funding to bring legal claims. On the other, I have investors – often universities and pension funds – that I need to protect by making sure they don't lose money. Having a clear-eyed focus on this dual-role is really important as everyone only really wins in the long run if we walk that line as well as we can.

Q What Is The Most Significant Trend In Your Practice Today?

A AI or, more specifically, talking about AI. There is clearly a huge application here to both funding and the practice of law and I am passionate about its implementation. The challenge as I see it is to remain discerning in assessing where there is genuine use-case and value- add versus hype, which is not easy at the moment, but I think the market will settle.

Q How Do You Deal With Stress In Your Work Life?

A I think perspective always helps. A mentor of mine from my time in private practice said that the role of a litigator is to be a safe harbour in a storm which really resonated with me: it's not my role to be stressed. Sharing the load with team members always helps and I think a lot can be said for the power of a ten minute walking meeting to reset.

Q What Has Been Your Most Memorable Experience During Your Career So Far?

A Genuinely too many to choose from. I've been incredibly lucky in having a really rewarding career with great colleagues, clients and the opportunity to travel. If I had to choose one, then spending a week in a honeymoon hotel in Zanzibar with my team preparing for a hearing in Tanzania has to be up there…

Q If You Could Give One Piece Of Advice To Aspiring Practitioners In Your Field, What Would It Be?

A This is easy. People, people, people. I never come away from a meeting without having learned something interesting and I find making new connections to be the best part of my job. I'm going to cheat and give one (more) piece of advice and that is to stay curious – any opportunity to learn about anything in or out of your field will pay huge dividends in the long run. Curiosity is a superpower!

Q If You Could Start All Over Again, What If Anything Would You Do Differently?

A Not a great deal – I'm happy with where I am! I think if I could go back to meet trainee Sean I would emphasise the power of people from day one and start building a network then (there is a theme here).

Q Do You Have A Favourite Food?

A I'm going to give a shoutout to Brutto in Farringdon, London here. Not just the food but the atmosphere, staff and size of the place means it's always a great experience and doesn't break the bank. The complete answer is that if I'm not meeting someone for lunch or dinner I would be equally happy with a burrito delivered at home whilst watching Celtic win in Europe!

Q What Brings You The Most Joy?

A An early morning with clear blue skies looking forward to a day outdoors with my wife.

GATEHOUSE CHAMBERS

+44 (0)20 7242 2523
gatehouselaw.co.uk
@gatehouse_law

INTERNATIONAL DISPUTE RESOLUTION

CONFLICTS OF LAW

CONSTRUCTION & ENERGY DISPUTES

COMMERCIAL CONTRACTUAL DISPUTES

ENFORCEMENT

FRAUD, ASSET TRACING & RECOVERY

INSURANCE COVERAGE CLAIMS

JOINT VENTURE DISPUTES

PROFESSIONAL NEGLIGENCE CLAIMS

RESTRUCTURING & CORPORATE INSOLVENCY

james.duncan-hartill@gatehouselaw.co.uk

UNMASKING FINANCIAL DISTRESS

FRAUD PREVENTION AND ASSET RECOVERY IN KENYAN INSOLVENCY

Authored by: Mercy Okiro (Advocate of the High Court) - Accredited Mediator and Arbitrator

The Insolvency Act of 2015 broadly defines the insolvency framework in Kenya. This legislation establishes various procedures to manage insolvency issues, including bankruptcy for individuals and the winding up of companies. Its primary objective is to ensure that insolvency cases are resolved efficiently and fairly while protecting the rights of both creditors and debtors.

Before the Insolvency Act was introduced in 2015, insolvency matters for both companies and individuals were managed under the winding-up provisions of the Companies Act and the Bankruptcy Act, respectively. For corporations, the resolution process typically involved entering into a winding-up proceeding that resulted in the liquidation of the financially distressed company and the distribution of its assets to creditors. This method often left creditors and stakeholders at risk of recovering only a fraction of what they were owed, particularly when a company's assets were insufficient to cover its liabilities.

To address these shortcomings, the Insolvency Act was enacted, unifying the insolvency procedures for companies and individuals into a single comprehensive framework. The Act emphasises rehabilitating insolvent corporate entities with recoverable financial positions, enabling them to continue operating as going concerns and thereby meet their financial obligations in a manner that is satisfactory to their creditors.

Despite the enhancements made by the Insolvency Act, fraudulent practices have become more prevalent in insolvency proceedings. In recent years, Kenya has experienced a rise in fraudulent asset transfers, mismanagement, and asset concealment, all of which undermine financial integrity and erode public trust in corporate governance.

One common fraudulent strategy involves directors deliberately shutting down operations to obscure their company's true financial state. This action limits the visibility of assets available for creditor claims. Additionally, some companies misreport financial information by undervaluing or omitting assets from financial statements, making it difficult for creditors to assess the company's true worth.

Another common fraud tactic is the pre-insolvency transfer of assets to related entities or third parties. This strategy protects valuable assets from creditor claims. In many cases, forensic audits uncover that such transfers are meticulously planned to conceal assets within affiliated companies or personal accounts, significantly diminishing the value available for recovery.

Case Studies of Corporate Fraud and Asset Recovery in Kenya

Mumias Sugar Company Scandal

A notable example is the Mumias Sugar Company case. An internal audit revealed that senior managers engaged in blatant looting and financial malpractice for over two decades,

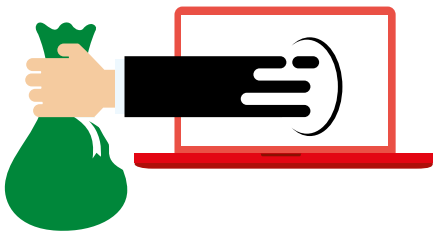
resulting in losses exceeding KES 2 billion[1]. The audit highlighted intentional violations of control procedures and collusion with audit firms to conceal false claims totaling KES 2.6 billion in 2008. These fraudulent activities significantly contributed to the company's financial decline, culminating in a loss of KES 15.1 billion for the year ending in June 2018, rendering the company technically insolvent[2].

Kenya Anti-Corruption Commission v. Stanley Mombo Amuti

In another case, the Court of Appeal upheld a tracing order to recover assets from Stanley Mombo Amuti, a former public official who was unable to account for substantial sums of money deposited into his account. Authorities seized over KES 21 million in cash and cheques, underscoring the importance of judicial intervention in asset recovery[3].

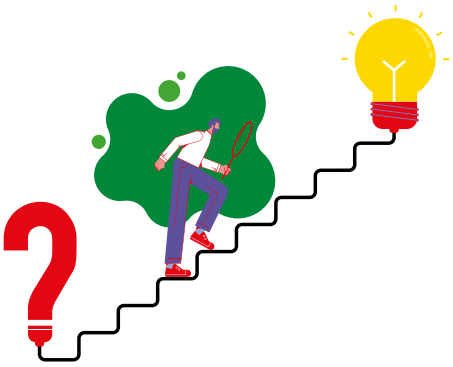
KUSCCO Scandal

The Kenya Union of Savings and Credit Co-operatives (KUSCCO) was involved in a scandal concerning the misappropriation of KES 13.3 billion through fraudulent transactions and mismanagement. Ongoing investigations have resulted in asset seizures and pending prosecutions of former officials, marking a significant step toward enforcing financial accountability[4].



Challenges in Combating Insolvency Fraud in Kenya

Despite the existing legal framework, insolvency proceedings in Kenya continue to face numerous challenges that hinder effective resolution and asset recovery. A significant concern is the weak enforcement of insolvency laws, which leads to prolonged cases and diminished confidence among creditors[5]. Fraudulent directors often exploit legal loopholes and delays in the judicial process to conceal assets or manipulate financial statements, making it difficult for creditors to recover their dues. Additionally, proving fraud in insolvency proceedings remains a major challenge, as the burden of proof rests heavily on the party alleging misconduct. This requirement complicates holding fraudulent directors accountable, particularly when insufficient documentary evidence or financial records have been deliberately falsified or destroyed.



Tracing offshore assets presents a significant challenge. The ease with which individuals can transfer money and assets across borders makes it difficult for regulators and creditors to track and recover hidden funds. Many fraudsters exploit weak financial oversight in foreign jurisdictions to hide illicitly acquired assets in bank accounts or investments outside Kenya. The lack of international cooperation in asset recovery further exacerbates this issue, as financial institutions in some countries are reluctant to disclose information about foreign-held accounts. This lack of access to crucial financial records greatly undermines Kenyan authorities' ability to recover misappropriated assets.

Another critical challenge is the lack of strong whistleblower protection laws. Many potential informants hesitate to report fraudulent insolvency practices due to fear of retaliation, job loss, or legal repercussions. This absence of protection leads to significant underreporting, allowing fraudulent activities to continue unchecked. Without an established system to encourage and protect whistleblowers, valuable information that could reveal fraud and aid in asset recovery often remains undisclosed.

Furthermore, law enforcement agencies and regulatory bodies often lack the necessary expertise and resources to conduct thorough financial investigations. The complexity of financial fraud requires specialized forensic accounting skills and advanced investigative tools, which are often unavailable or underutilized in Kenya. As a result, cases involving insolvency fraud are either inadequately investigated or take years to resolve, diminishing the chances of successful prosecution and asset recovery. Weak case preparation due to poor evidence collection further allows fraudulent directors to evade legal consequences, perpetuating a cycle of financial misconduct.

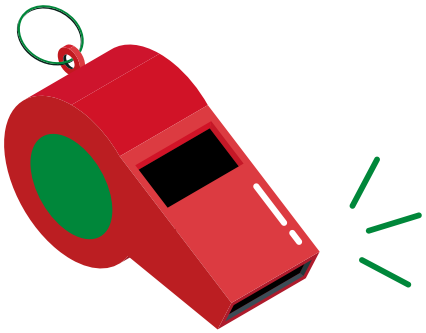
1 Nation Africa, 'Senior Managers Stole Billions and Covered Up Looting of Ailing Mumias' (2 November 2014) https://nation.africa/kenya/business/senior-managers-stole-billions-and-covered-up-looting-of-ailing-mumias--1039406 accessed 4 April 2025.
2 Business Daily, 'Sh15 Billion Loss Leaves Mumias Sugar Insolvent' (4 April 2019) https://www.businessdailyafrica.com/bd/corporate/companies/sh15-billion-loss-leaves-mumias-sugar-insolvent-2242472 accessed 4 April 2025.
3 Kenya Anti-Corruption Commission v Stanley Mombo Amuti [2019] KECA 783 (KLR)
4 Kenya Union of Savings & Credit Co-Operatives Limited (KUSCCO) v Sacco Societies Regulatory Authority [2019] KEHC 10904 (KLR)
5 B Gitau and N Rachier, 'The Insolvency Act, 2015: The Impact on Creditors and Their Right to Realise Securities' (Oraro & Company Advocates, 29 November 2016) https://chambers.com/articles/the-insolvency-act-2015-the-impact-on-creditors-and-their-right-to-realise-securities accessed 4 April 2025.

Recommendations for Strengthening Kenya's Insolvency Framework

Several critical reforms must be enacted to tackle these challenges and improve the effectiveness of insolvency proceedings in Kenya. Strengthening the legal framework ensures that fraudulent activities are easily prosecutable and that offenders face stringent penalties. Amendments to existing laws should focus on closing legal loopholes that enable fraudulent directors to exploit insolvency proceedings. Clearer guidelines on asset disclosure, harsher penalties for fraudulent asset transfers, and stricter financial reporting requirements would significantly deter corporate misconduct.

Enhancing international cooperation is crucial for improving the tracing and recovery of offshore assets. Kenya should strengthen alliances with international financial regulatory bodies and participate in information-sharing networks to track and recover misappropriated funds hidden in foreign jurisdictions. By signing mutual legal assistance treaties with countries often used as tax havens, Kenyan authorities can access essential financial records, making it easier to hold fraudulent directors accountable.

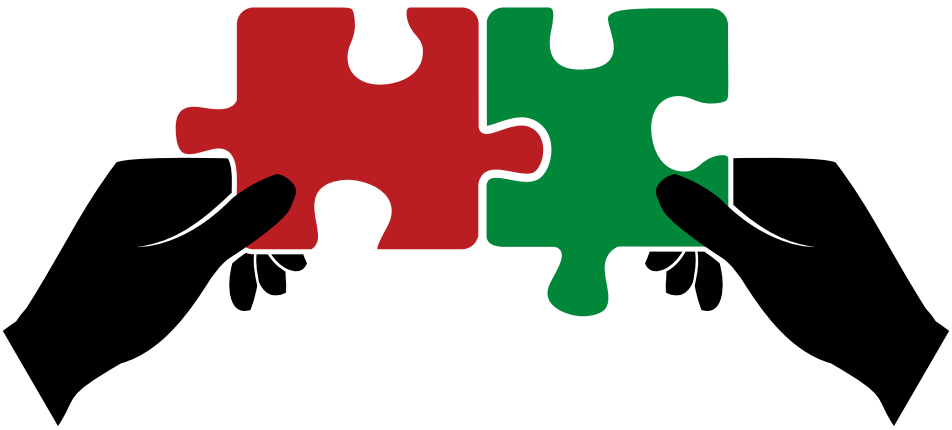
Implementing strong whistleblower protections would encourage individuals to report fraudulent activities without fear of retaliation. Establishing comprehensive whistleblower laws, which include guarantees of anonymity, financial incentives, and legal safeguards against victimization, would promote transparency and accountability in insolvency proceedings. Encouraging corporate employees, auditors, and financial professionals to report misconduct can significantly aid in uncovering fraudulent schemes before they escalate.



Investing in investigative capacity building is another crucial step toward strengthening Kenya's insolvency framework. Law enforcement agencies should receive specialised training in financial forensics, fraud detection, and asset recovery to enhance their ability to effectively investigate complex insolvency cases. Adopting modern investigative tools like data analytics, artificial intelligence, and blockchain technology can also improve fraud detection and evidence collection, resulting in more successful prosecutions.

Finally, promoting transparency and corporate accountability is essential in reducing insolvency fraud. Companies should be encouraged to adopt transparent financial practices, including regular audits, public disclosure of financial statements, and adherence to rigorous corporate governance standards. Regulatory bodies must enforce compliance by holding directors and executives personally accountable for financial mismanagement.

By ensuring greater corporate accountability, Kenya can create an insolvency framework that prioritises fair outcomes for all stakeholders, ultimately restoring confidence in the country's financial and legal systems.



Networking Seminars Podcasts

TDN Tech Disputes Network

TDN is an inclusive group of legal and tech professionals interested in learning how to avoid, manage and win technology disputes.

Join TDN to hear about our next event.

https://disputes.tech

TRIVIA

FIRE EDITION

1 HOW MANY PEOPLE DO YOU THINK ATTENDED FIRE INTERNATIONAL: VILAMOURA 2025?

2 NAME 1 ACTIVITY ON DAY 2 OF FIRE STARTERS: SUMMER SCHOOL

3 WHAT ARE THREE WORDS IN THE WORDSEARCH FROM ISSUE 20: THE FIRE STARTERS EDITION OF THE FIRE MAGAZINE?

4 WHEN IS OUR WOMEN IN FIRE PRESENTS: ASSET RECOVERY IN ACTION TAKING PLACE?

5 WHO WERE THE AUTHORS OF OUR FIRE ARTICLE 'MAREVA AT 50: STRATEGIES AND TACTICS IN FREEZING INJUNCTION: DEFINITION OF ASSETS' IN APRIL 2025?

INSTRUCTIONS: Fill in your answers on Adobe or email us the answers directly.

Complete to redeem a 15% discount to one of our FIRE events.

Once complete, please send over to
amelia@thoughtleaders4.com

*This offer expires on Friday 20th June 2025, this discount code is not eligible for use with other codes.

Our FIRE Corporate Partners:

HFW

MBK.LAW
SWISS LITIGATORS

Charles Russell Speechlys

IWIRC
connecting women worldwide

KINGSLEY NAPLEY
WHEN IT MATTERS MOST

PAYNE HICKS BEACH

IFG

PCB BYRNE

COLLAS·CRILL

GASSER PARTNER
ATTORNEYS AT LAW

FFF
FEMALE FRAUD FORUM

3VB Three Verulam Buildings Barristers

GATEHOUSE CHAMBERS

TWENTY ESSEX

MAITLAND

Control Risks

Pinsent Masons

serle court

COOKE, YOUNG & KEIDAN
COMMERCIAL DISPUTES LAWYERS

VANTAGE
INTELLIGENCE

RAHMAN RAVELLI

DUBLIN INTERNATIONAL DISPUTES WEEK

TDN Tech Disputes Network

dga

ASSERSON

ThoughtLeaders FIRE

Meet ThoughtLeaders

Paul Barford
Founder/
Managing Director
020 7101 4155
email Paul

Chris Leese
Founder/Chief
Commercial Officer
020 7101 4151
email Chris

Danushka De Alwis
Founder/Chief
Operating Officer
020 7101 4191
email Danushka

Maddi Briggs
Strategic Partnership
Senior Manager
07825 557739
email Maddi

Amelia Gittins
Strategic Partnership
Executive
020 3059 9797
email Amelia

Ben Sullivan
Commercial
Director
020 3965 4386
email Ben