

THE CASE OF THE MISSING DIAMONDS: A BEST-PRACTICES PRIMER IN MULTIJURISDICTIONAL ASSET RECOVERY



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The investigation had all the makings of a Hollywood thriller: hundreds of millions of dollars in missing diamonds, an investigation that hopscotched from Moscow to Antwerp to Dubai, and a crucial diagram sketched by a confidential informant on the back of a napkin.

The various turning points in the case and its successful resolution help illustrate four key asset recovery principles that are particularly important in complex multijurisdictional recovery assignments.



A Surprise in the Seized Vault

The conflict began when one of the world's largest diamonds distributors repeatedly rescinded on its payment obligations for a \$350 million line of credit with a major European bank. After repayment negotiations broke down, a European court froze the diamond firm's assets and authorities were sent to seize the bags of diamonds used as collateral for the credit line. But after the bags were discovered to hold nothing but worthless diamond dust, the Mintz Group was brought in by the bank to track down the missing gems.

The first step was to position the diamond firm within its industry and to map its value chain from end to

end. After all, given that the diamond firm was in the business of moving diamonds, the mechanics of that business was likely to hold clues as to where the missing diamonds were. But because the bank knew little of the inner workings of its debtor, we were forced to model the structure of the diamond firm and its relationships from scratch.

Principle 1: Don't assume the client has perfect knowledge of the situation.

Given the risk borne by the lender in issuing such a large line of credit, one would expect its due diligence to provide a close read on the debtor. Too often, however, the fees the relationship generates causes even sophisticated lenders to taper their due diligence once compliance requirements are met. Client information thus is often incomplete, obsolete or based on faulty assumptions.



Building the Intelligence Team

We turned to our global network of sources to help fill in the blanks; those sources led us to others, ranging from the diamond company's competitors to informants used by law enforcement. In addition to mapping global diamond shipping routes and understanding each step involved in bringing diamonds from mines to consumers, we also learned that it was common knowledge in the industry that the company had purchased roughly \$200 million worth of diamonds just prior to the freezing of the firm's assets. We also learned that Dubai—a jurisdiction whose fairly opaque reporting requirements would make it a plausible location to smuggle gems—was emerging as a global diamond trading hub. Finally, an industry insider with whom we spent weeks building a relationship sketched out how the diamond company could have acquired such a large stash of gems while circumventing the Kimberley Process, a global reporting procedure in place to combat trade in “blood diamonds” used to finance armed conflict.

Principle 2: Choose your sources the way you would make a key hire.

Just as an employee that combines the right experience with a visionary mindset can dramatically accelerate a company's innovation, a source with similar qualities can markedly reduce the amount of time an investigation requires—a critical consideration given that a creditor must assume it is a race against other creditors for recovery. And like successfully landing a key hire, developing a high-value source requires investing the time and energy necessary to form a person-to-person connection.



Connecting the Dots

The various pieces of information we gleaned from our research allowed us to form a hypothesis: Even as the company was balking at the bank's repayment demands, it was acquiring large amounts of diamonds; once negotiations with the bank broke down

and legal action commenced, the company used couriers on commercial flights to smuggle the diamonds into Dubai, where they could be easily hidden or sold. This hypothesis led us to identify additional potential sourcing and sales channels in Russia, London and India. We then focused our efforts on these four areas, where we expanded and cross-corroborated our sources, and conducted reconnaissance and surveillance. One by one, the pieces fell into place. Import and export data confirmed the company had received significant diamond shipments from suppliers in Russia. Surveillance confirmed company representatives engaged in buying and selling rough diamonds at an industry trading hub in London. Confidential sources cultivated in Dubai and India confirmed the methods and routes of the company's smuggling operations.

Principle 3: Keep the investigation tethered to the hypothesis.

While this sounds straightforward in theory, it can be difficult to do in practice. A global client in a complex asset recovery case will have multiple constituencies—the board of directors, the general counsel, the asset recovery unit and the investigations and intelligence unit, as well as external legal counsel in various jurisdictions—each under pressure and with its own priorities and ideas about how the case should be run. In the face of this range of voices, the hypothesis needs to be the touchstone that focuses energy and resources, keeping the case from being pulled in different directions.



Striking at the Debtor's Pain Points

The fruits of the investigation gave us what we needed to file a convincing complaint with the judge whose asset freeze order was being violated by the diamond company's smuggling operation. The judge was predictably furious and appointed an administrator to oversee the company's books and records. This was a critical turning point in the case, forcing transparency of the company's machinations and limiting its freedom of movement going forward. Just as importantly, the appointment of an administrator meant that the company could no longer dismiss the conflict with

the bank as a routine commercial dispute; the diamond company's credit ratings fell, other banks with whom the company had credit lines started asking pointed questions and the rest of the industry shied away from doing business with them.

These developments got the company's attention in a way that the bank's earlier legal actions failed to do; with its access to both capital and the diamond markets in jeopardy and its reputation blackened, the company was cornered. Faced with no other choice, the company sat down with the bank and negotiated repayment of its outstanding credit line.

Principle 4: Asset recovery isn't always about recovering the assets.

On the surface, the investigation's objective was simple: Find the missing diamonds. But our client's real goal wasn't the diamonds—it was getting the diamond company to honour its debt obligations. For that, it was enough to make the diamond company a pariah within its industry and to its financing sources. Throughout the asset recovery process, maintain a strategic mindset focused on both the client's larger objectives and the debtor's pain points.

Because they unfold over several geographies, cultures and legal and regulatory regimes, multijurisdictional asset recovery cases bring an extra level of complexity that can test even the most seasoned investigators. In these situations, it is all the more important to hew closely to best practices that will keep the investigation running efficiently and focused on its strategic goals.

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