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# Global Asset Recovery

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# Global Asset Recovery

**The Story So Far.....**





# United States Asset Recovery

- **Pre-Insolvency/Restructuring**
  - Preliminary injunctions and temporary restraining orders can be invoked under Federal Rules of Civil Procedure (FRCP) Rule 65
  - Attachment procedures enable creditors to secure a debtor's property in anticipation of a potential judgement
  - FRCP discovery rules can assist in the identification and tracing of asset
- **Bankruptcy Process**
  - Formal bankruptcy framework covered by the United States Bankruptcy Code
- **Asset Tracing**
  - The debtor is required to file a list of creditors, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs
  - Trustee can trace a debtor's assets by reviewing the debtors bank accounts, tax returns, financial statements and public records to identify relevant transactions
  - Under Rule 2004, the court can order broad discovery and investigations into the financial affairs of the debtor
- **Recovery**
  - Fraudulent Conveyances and Preference Actions
  - The Federal Bureau of Investigation (FBI) and the Attorney General (AG) are designated to enforce several bankruptcy-related crimes including concealment of assets and false statements



# Cayman

Processes Pre-Insolvency	Legislation
Provisional Liquidations (Company)	After the presentation of the Winding Up petition but before the making of a Winding Up Order Section 104 of the Insolvency Act
Inspectorship	<p>Members of a Cayman Islands company may apply to the Court. To be made by originating motion, as per Grand Court Rules, O.102,r3(a).</p> <p>Alternatively, Pursuant to Section 67 of the Companies Act, Inspectors may be appointed by special resolution of the Company.</p>
Receiver by the Court	Application for a court-appointed receiver may be made by summons or motion. Grand Court Rules, O.30,r1(1)
Norwich Pharmacal Order (NPO), Bankers Trust Order,	Application to courts for disclosure order against third party e.g. to disclose sensitive information and documents to assist the applicant to identify or pursue a potential defendant to future proceedings.

# Cayman

Processes Post-Insolvency	Legislation	Office Holder
Winding Up by the Court- can include unregistered companies, partnerships etc	Section 92 of the Companies Act (2023 Revision)	Provisional Liquidator and then Official Liquidator
Voluntary Liquidation	Section 120 Companies Act	Any person may be appointed as a Voluntary Liquidator of a Cayman Islands company
Bankruptcy	Bankruptcy Act (1997 Revision)	Initially the Receiver and then Trustee



# Cayman

Powers					
<p>Power to require delivery up of books and records – hard copy and electronic - by defendants and third parties, take images</p>	<p>Power to dispose of any property of the company to a person who is or was related to the company.</p>	<p>Power to take possession of, collect and get into the property of the company and for that purpose to take all such proceedings as that person considers necessary</p>	<p>Compel cooperation and examination at court – Public and Private examination – non cooperation = warrant for arrest</p>	<p>Subject to court sanction, either within the order or subsequent to a winding up order; ability to seek litigation funding on commercial terms in order to pursue asset recovery.</p>	<p>Causes of actions available to liquidators to recover assets/financial loss not available to ordinary litigants:</p> <ul style="list-style-type: none"> <li>- avoiding preferential payments;</li> <li>- avoiding fraudulent dispositions at undervalue; and</li> <li>- seeking orders requiring persons guilty of fraudulent trading to contribute to the assets of the company.</li> </ul>
	<p>With Sanction (Schedule 3 (section 110) Companies Act) (2023 Revision)</p>	<p>Without Sanction (Schedule 3 (section 110) Companies Act) (2023 Revision)</p>			<p>S 145, 146 and 147 of Companies Act</p>

# Cayman

Other Jurisdictions	
<p>Use of the Model Law</p>	<p>Ability to seek recognition in other jurisdictions under the Model Law, which enables a liquidator to access powers as granted to liquidators in those jurisdictions.</p> <p>Required in certain jurisdictions when seeking to deal with assets in those countries. Others will allow information to be shared with the liquidator without any recognition. Other (eg Switzerland) have a blocking statute whereby criminal prosecution is threatened if no local legal order has been obtained.</p> <p>Useful in asset tracing for example in obtaining information from third parties but also Chapter 15, and seeking information from US correspondent banks on US dollar transactions.</p>
<p>Foreign Judgements</p>	<p>Cayman Islands has not entered into any international treaties in respect of recognitions and enforcement of foreign judgements.</p> <p>Nor has any United Kingdom (UK) treaty or convention been extended to the Cayman Islands other than the New York Convention.</p> <p>Cayman Islands is not a signatory to the Hague Convention.</p> <p>Recognition and enforcement of foreign judgements is generally recognized under common law.</p> <p>Foreign judgement creditors would otherwise open fresh proceedings in the Court based on merits of the foreign judgement with the goal of obtaining a judgement of the Court.</p>



# United Kingdom

Processes Pre insolvency	legislation
Freezing Orders	CPR 25.1(1) Uncitral Model Law Trade and Cooperation Agreement (EU) With or without notice
Proprietary Injunctions/Tracing claims	CPR & S37(1) of the Senior Courts Act 1981 Uncitral Model Law With or without notice
Foreign Judgement Recognition and Enforcement	Hague Convention. Administration of Justice Act 1920. Foreign Judgement (Reciprocal Enforcement) Act 1933 Common Law EU Legacy Judgment  Which to use “ it depends”!



# United Kingdom

Processes Post	Legislation	Office Holder
Winding up by the Court— can include unregistered companies, partnerships etc	Section 124 of Insolvency Act 1986	Initially the Official Receiver and then an Insolvency Practitioner is Liquidator
Administration	Insolvency Act 1986 Enterprise Act 2002	IP = Administrator
Bankruptcy		Initially the Official Receiver and then an IP = Trustee
Interim Receiver	Proceeds of Crime Act 2002	Insolvency practitioner
Management & Enforcement Receiver.	Proceeds of Crime Act 2002	Insolvency practitioner



# United Kingdom

Powers				
Power of search and seizure, change locks, deal with employees etc.	Power to require delivery up of books and records – hard copy and electronic – by defendants and third parties, take images	Power to enter premises (particularly to recover books and records)	Compel cooperation and examination at court – Public and Private examination – non cooperation = warrant for arrest	To bring claims for Breach of Duty, Misfeasance, Dishonest assistance (third parties) wrongful trading. Proprietary claims. Summary judgement
Contempt proceedings – max 2 years.	Suspend Discharge from Bankruptcy - indefinitely	Remove and sell assets.	Postal redirection – Email redirection	Passport delivery up



# United Kingdom

Other Jurisdictions	
Commonwealth	UK IP licenses recognised in most of these – based on UK Insolvency law.
Europe	Local recognition – Switzerland criminal proceedings
IOM, Jersey, Guernsey	Regular recognition applications from the UK
Israel ETC	Based on the UK 1914 Insolvency Act – Official receiver etc



# Japan Asset Recovery

- **Pre-Insolvency Proceedings**
  - Preliminary injunctions and temporary restraining orders under the Japanese Civil Procedures.
  - Foreign Judgement recognition and enforcement is necessary, if there are no orders from Japanese courts.
- **Formal Insolvency Proceedings**
  - Four main insolvency proceedings in Japan.
  - Rescue type: (i) civil rehabilitation proceedings and (ii) corporate reorganization proceedings.
  - Liquidation type: (iii) bankruptcy proceedings and (iv) voluntary liquidation proceedings.
  - Recognition of and assistance for foreign insolvency proceedings.
- **Asset Tracing – Post-Insolvency**
  - The debtor is required to file list of creditors, schedule of assets and liabilities, statement of the debtor's financial affairs etc.
  - Trustee can trace debtor's assets by reviewing the debtors bank accounts, tax returns, financial statements, mail correspondence etc.
- **Recovery**
  - Insolvency: Right of avoidance under the Japanese insolvency proceedings.
  - Civil Procedures: Right to demand rescission of fraudulent acts (fraudulent conveyances) under Articles 424-426 of the Japanese Civil Code.



# Global Asset Recovery

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