



# International Asset Recovery

## International Maritime Bureau

6 October 2015

**Anthony Riem**  
Partner

Commercial Fraud Specialists  
PCB Litigation LLP  
E-mail : [ajr@pcblitigation.com](mailto:ajr@pcblitigation.com)  
Web Site : [www.pcblitigation.com](http://www.pcblitigation.com)

**ICC FraudNet**  
COMMERCIAL CRIME SERVICES

**PCB**  
LITIGATION  
SOLICITORS

# PCB Litigation

## Clients

- Government Agencies
- Financial Institutions
- State Enterprises
- International Businesses
- Investors/Shareholders



# PCB Litigation

Since 2010, PCB has frozen assets in excess of US\$1.2 billion:

- In countries including Belgium, Belize, Cayman, Cyprus, Jersey, Israel, Russia, Switzerland, UK
- In respect of claims involving banking, trade finance, metals, minerals, telecommunications, and real estate

Claims involve parties worldwide:

- Africa, Caribbean, EU, Middle and Far East, North and Central America, Pacific, Russia and the CIS, Ukraine, and UK



# Agenda

- Investigating the Fraud
- Court Orders
- The Choice of Defendant
- Case Study

# Managing International Asset Recovery

- Review current position
- Build a bespoke team
- Building the case and asset identification
  - a) Investigators
  - b) Disclosure and Gagging Orders
- Assess the attractions of alternative forums
- Once assets identified, consider feasibility of attachment process
- Obtain/produce evidence of risk of dissipation

# Investigating the Fraud

## Admissibility

- England and Wales
  - The gathering of evidence by illegal means has not in general led to its exclusion under the English law of evidence but now *Tchenguiz v Imerman* (2010)EWCA Civ 908
- Germany
  - Evidence obtained by pretext admissible. Evidence recorded without consent inadmissible
- Canada
  - Video evidence of activities in public inadmissible



# Investigating the Fraud

## Admissibility

- US
  - Investigators used “pretexting” to investigate source of media leaks from Hewlett Packard

# Court Orders

- Disclosure Orders
- Freezing Disclosure
- Search orders
- Orders for examination
- Surrender of passport
- Committal to prison
- Appointment of a Receiver
- Summary Judgment
- Criminal prosecution



# Third Party Disclosure and Gagging Orders

An obligation to provide full information and disclose the identity of the wrongdoers:

- Where a Defendant through no fault of his own has 'got mixed up' in the tortious acts of others so as to facilitate their wrong-doing
- Breach of confidence and breach of contract
- To enable the victim of a crime to identify the perpetrator of a criminal offence
- To complete the crucial or missing piece of a jigsaw
- Unnecessary to bring legal proceedings against the wrongdoer, provided some other legitimate purpose in seeking disclosure was identified

# Third Party Disclosure and Gagging Orders

Capable of use in other jurisdictions

- Jurisdiction to make a third party disclosure order in Gibraltar in aid of Portuguese proceedings even though there was no jurisdiction to make such an order in Portugal

Secilpar SL v Fiduciary Trust Limited (unreported 24 September 2004)

# Disclosure Overseas

## Local Provisions

### US Code of Civil Procedure - Section 1782

- Allows district courts in America to assist foreign and international tribunals with disclosure and evidence-gathering
- The court may
  - Order a person to give testimony or a statement
  - Produce a document for use in proceedings before a foreign court

# Freezing Orders

Available against assets worldwide if insufficient assets in England and Wales

- The amount frozen can include legal and investigation costs and may be unlimited
- Includes assets in other people's names if bought with the fraudster's assets

# Freezing Orders

## Further Applications:

- Trust Busting
- Piercing the corporate veil
- Recipients of assets
- Penal Notice/Contempt of Court

# The Choice of Defendant

- The Fraudster
- Accessories
  - Assist
  - Knowing receipt or dealing
- Owe Duty
  - Professionals
  - Directors/Officers/Senior Employees

# Case Study

## Multi-Jurisdictional Court Proceedings

- Freezing, Disclosure, Asset Tracing Proceedings in
  - 7 jurisdictions relating to misappropriation of energy company's assets
  - Several jurisdictions in relation to misappropriation of Bank's assets



# Case Study

## The Claim

- Against a prominent family for US\$450m plus interest based on deceit, breach of fiduciary duty and sham contracts
  - Strategy
  - Building the case
  - Evidential Integrity

# Case Study

## Orders Obtained

- Freezing orders in England, Jersey, Guernsey and BVI, each in the sum of US\$500m together with proprietary injunctions
- Search Orders executed simultaneously at 3 different premises at the same time that the freezing orders were served
- Delivery up of passports and direction to arrest if fail to do so
- Third party disclosure orders against various banks, solicitors, ISPs and others

# Case Study

## Analysis

- Vast asset disclosure of the Defendants to reveal complex structures with nominees, offshore companies and trusts
- Electronic disclosure obtained on the search as well as the third party disclosure comprised in excess of 80 computers, mobiles phones and electronic storage devices and 100's of files
- Possible further claims of several hundred millions of dollars

# Case Study

## Further Orders Obtained

- Cross-examination of the Defendants' assets
- Medical examination of Defendant
- Injunctions to prevent allegations of witness intimidation with undertakings being given by other defendants

# Case Study

## Other Matters

- Successfully resisted an application made by some of the Defendants for fortification of the cross-undertaking in damages in the sum of US\$100m
- Successfully resisted threatened injunctions by the Kazakh Government
- Debarring of Defendants



# International Asset Recovery

## International Maritime Bureau

6 October 2015

**Anthony Riem**  
Partner

Commercial Fraud Specialists  
PCB Litigation LLP  
E-mail : [ajr@pcblitigation.com](mailto:ajr@pcblitigation.com)  
Web Site : [www.pcblitigation.com](http://www.pcblitigation.com)

**ICC FraudNet**  
COMMERCIAL CRIME SERVICES

**PCB**  
LITIGATION  
SOLICITORS