

Asset Recovery

In 26 jurisdictions worldwide

Contributing editors

Jonathan Tickner and Sarah Gabriel



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Asset Recovery 2015

Contributing editors

Jonathan Tickner and Sarah Gabriel

Peters & Peters Solicitors LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
George Ingledeu
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

Dan White
dan.white@lbresearch.com



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Law Business Research Ltd
87 Lancaster Road
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Cayman Islands

James Corbett QC and Pamela Mitchell

Kobre & Kim

Civil asset recovery

1 Legislation

What are the key pieces of legislation in your jurisdiction to consider in a private investigation?

The primary laws in the Cayman Islands that contemplate private investigations include:

- the Confidential Relationships (Preservation) Law (2009 Revision) ('bank secrecy legislation');
- the Companies Law (2013 Revision), as amended;
- the Criminal Justice (International Cooperation) Law (2010 Revision) (CJICL); and
- the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978 (EO).

In addition to the partial list of the relevant legislation above, common law and equity have provided guidance in respect of asset tracing.

2 Parallel proceedings

Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Subject to certain restrictions, parallel civil and criminal proceedings are permissible in the Cayman Islands courts. In *The Matter of Fraser* (2003) CILR 227, Chief Justice Smellie observed that the court could reach findings in its civil jurisdiction concerning an innocent party's rights in property, even before criminal proceedings in which that property was concerned had been concluded. In that case, property owned either by the criminal defendant or the innocent third party had been restrained by the Crown in confiscation proceedings, but the court in exercising its civil jurisdiction felt able to determine the third party's civil rights in that property. This case reflects the general principle that a court may reach a determinative conclusion in the civil jurisdiction before criminal proceedings have been concluded.

To run proceedings in parallel, one must provide sufficient reasons as to why one set of proceedings cannot answer all the outstanding questions. In *Tasarruf Mevduati Sigorta Fonu v Wisteria Bay Ltd & Ors*, (2007) CILR 285, Chief Justice Smellie considered whether it was wrong for a defendant who was the subject of criminal proceedings abroad to also be made a defendant to a domestic civil claim arising out of the same issues. In his judgment, he restated the principles in *Thames Launches Ltd v Trinity House Corp*, (1960) 2 Lloyd's Rep 407, that where two courts are faced with substantially the same question, it is desirable to ensure that the question is debated only in one of those two courts if by that means justice can be done.

The Privy Council in *Panton v Financial Institutions Servs Ltd*, PC App No. 95 of 2002, gave guidance that a defendant in criminal proceedings would have to show why civil proceedings should be delayed until the conclusion of the criminal process. The defendant would have to show that he or she stands to suffer unjust prejudice by the continuance of the civil proceedings in order to delay them. It was also noted that an accused's right to silence in criminal proceedings did not extend as a matter of right to give the defendant the same protection in civil proceedings. The test was whether the defendant would be unjustly prejudiced in criminal proceedings by having to give evidence in civil proceedings.

3 Forum

In which court should proceedings be brought?

The Financial Services Division of the Grand Court of the Cayman Islands is the Cayman commercial court in which to address all proceedings relating to Cayman-registered investment funds and exempted insurers; proceedings under the Companies Law; claims in excess of a certain threshold for breach of insurance contracts; local and foreign bankruptcy proceedings; and proceedings for enforcing foreign judgments and arbitral awards.

4 Limitation

What are the time limits for starting civil court proceedings?

The civil limitation periods for bringing a claim in the Cayman Islands are governed by statute and depend on the type of claim (in general, fraud claims are not triggered until the claimant discovers the facts on which the cause of action is based):

- tort: six years from the date of the damage;
- contracts: six years from the date of the breach;
- claims by a beneficiary against a trustee for fraudulent breach of trust: no limitation period; and
- claims for the recovery of land: 12 years from the date when the right accrued.

5 Jurisdiction

In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Under section 11 of the Grand Court Law 2008, the Grand Court holds and exercises jurisdiction in a similar manner to the High Court of Justice in England and Wales. The arguments on which a defendant may challenge jurisdiction or forum conveniens are also similar and the Cayman Islands use England and Wales law to examine the problem.

6 Admissibility of evidence

What rules apply to the admissibility of evidence in civil proceedings?

The rules of evidence are much the same as those applicable to England pre-1999. This being the case, pre-1999 case law can often provide very persuasive guidance in establishing whether evidence is going to be admissible, or not as the case may be, in civil proceedings.

The Evidence Law (2011 Revision), Part IV, sections 42 to 56, provides statutory direction as to what is admissible evidence in the Cayman Islands courts.

Lastly, it is observed that the Supreme Court Practice 'White Book' (1999 edition) is a most useful text to refer to when determining the admissibility of evidence in civil proceedings in the Cayman Islands courts.

Section 44 of the Evidence Law contains a qualified prohibition against hearsay evidence in civil proceedings.

7 Publicly available information

What sources of information about assets are publicly available?

Securities registration

If operating in the Cayman Islands, securities must be registered with the Cayman Islands Monetary Authority (CIMA). The only public information is the registration number and the type of securities fund that is registered with the organisation. The date of registration may also be available.

Vehicle registration

This is not generally available to the public.

Land registration

This is open and accessible to the public.

Exempt companies' register of members

This is not open to inspection.

8 Cooperation with law enforcement agencies

Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

Generally, yes. The police, for example, frequently make motor vehicle accident reports prepared for criminal proceedings available in civil proceedings. The Freedom of Information Law 2007 also provides a general right of access to information held by public bodies, save where those records are considered exempt under Part III of the law. This mechanism may also be used to obtain information and evidence.

9 Third-party disclosure

How can information be obtained from third parties not suspected of wrongdoing?

The case of *Bankers Trust v Shapira*, (1980) 1 WLR 1274, established the following requirements for the court to have jurisdiction to order discovery in aid of tracing claims:

- an order should be granted only where there was good reason to believe that the property held by the bank required to give discovery was the property of the plaintiff;
- the plaintiff should give an undertaking in damages;
- the plaintiff should undertake to pay any and all expenses to which the bank was put in giving discovery; and
- documents produced by the bank should be used solely for the purpose of tracing money and not for any other purpose.

A party given disclosure is usually adequately protected by the implied undertaking by the other party not to make improper use of the information obtained.

The general rule that a non-party is protected from disclosure does not apply where an action could not be begun against the wrongdoer without discovery of the information sought or where the person against whom discovery is sought has become involved, albeit innocently, in the wrongdoing.

The following classes of documents must be disclosed but are withheld due to privilege:

- documents protected by legal professional privilege;
- documents tending to incriminate or expose to forfeiture the party who would disclose them;
- documents privileged on the grounds of public policy; and
- documents whose disclosure would breach the law (eg, confidentiality laws).

10 Interim relief

What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

- Mareva injunction;
- interim injunctions, in which case:
 - there must be a serious issue to be tried;

- the justice of the case must be in favour of an injunction being granted, pending the trial of the case;
- it is unlikely if the applicant can be adequately compensated by damages; and
- the applicant is usually required to give an undertaking, sometimes with security, to meet any loss suffered by the respondent if the injunction is subsequently set aside or is proved to have been wrongly granted;
- mandatory interim injunctions:
 - Anton Piller orders: allowing persons to enter a defendant's property to search for and remove property;
 - orders for the detention, inspection and preservation of property which is the subject matter of the dispute;
 - orders appointing receivers to gather in and preserve property pending the trial;
 - orders for interim payments where either:
 - defendant has admitted liability; or
 - there is a judgment on liability pending on assessment of damages; and
 - an order appointing provisional liquidator in company winding-up proceedings to prevent:
 - dissipation of the company's assets;
 - oppression of minority shareholders; and
 - mismanagement and misconduct by the company's directors.

11 Right to silence

Do defendants in civil proceedings have a right to silence?

Section 55 of the Evidence Law (2011 Revision) provides a right to silence against incriminating oneself or one's spouse in relation to criminal offences under the laws of the Cayman Islands. However, it does not apply to providing statements or producing evidence that may tend to incriminate a person or their spouse of a civil wrong.

The right to silence where there are parallel civil and criminal proceedings will be determined (so far as the right to silence in civil proceedings is concerned) by whether or not the party at risk of incrimination by giving evidence in civil proceedings would find their position in criminal proceedings unjustly prejudiced if they were not allowed to maintain their silence.

12 Non-compliance with court orders

How do courts punish failure to comply with court orders?

A court may rule in favour of the claimant if the defendant does not comply with disclosure orders or another order of the court.

An individual or entity can be found in contempt of court, which could result in a fine or imprisonment or both.

13 Obtaining evidence from other jurisdictions

How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

Information can be obtained through courts in other jurisdictions under The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents and The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970.

14 Assisting courts in other jurisdictions

What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Serving proceedings on a party under Cayman Islands jurisdiction

Under the Grand Court Rules, service can be effected by an attorney or private process agent.

If proceedings are to be served under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, they should be sent to the clerk of the court with a written request for service from the relevant authority in the other jurisdiction.

Taking evidence from a witness under the jurisdiction of the Cayman Islands

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 can be used.

The foreign court must usually issue a letter of request seeking the assistance of the Grand Court.

Application can be made to the Grand Court for an order giving effect to the request.

The Grand Court can, in appropriate circumstances, order the disclosure of documents for use in proceedings in another jurisdiction.

Enforcing foreign judgments

Parties seeking to enforce the judgment must bring an action based on it.

A judgment can be enforced if:

- the court issuing the judgment had valid jurisdiction according to Cayman Islands law;
- the judgment is final and conclusive in the court that issued it;
- the judgment has not been obtained by fraud or given in breach of natural justice; and
- it is not contrary to public policy.

Judgments obtained in jurisdictions subject to the Foreign Judgments Reciprocal Enforcement Law are applicable only to Australia and External Territories.

15 Causes of action

What are the main causes of action in civil asset recovery cases and do they include proprietary claims?

Fraud, fraudulent transfer, tort and conversion

Common law tracing

The Law of Restitution is based on unjust enrichment if the defendant has been enriched by the receipt of a benefit; the enrichment is at the expense of the claimant; or the retention of the enrichment is unjust.

If the person in the commission of a tort enriches himself by taking or using the property of another, the latter may, instead of suing in tort to recover damages for the injury done, recover the value of that which was wrongfully taken or used. (However if restitution is pursued, tort is waived.) The limitations of this are that:

- it does not recognise equitable interests in property;
- it is not normally possible to compel the return of the property in specie; and
- it cannot identify the plaintiff's money in a mixed fund.

Equity tracing

Equity tracing is only possible where the claimant can establish that the defendant or a third party is in a fiduciary relationship with him which has been broken and that he has an equitable proprietary interest in the relevant property. Fiduciary relationship is construed widely.

Property can be traced to anyone until a bona fide purchaser for value without notice acquires the legal title to the property or the property ceases to be identifiable even in equity.

Conversion

Anyone who, without authority, receives or takes possession of another's goods with the intention of asserting some right or dominion over them, or deals with them in a manner inconsistent with the right of the true owner, is prima facie guilty of conversion (the taking must be accompanied by an intention to exercise permanent or temporary dominion, which would be consistent with cases of fraud).

It should be noted that no action exists for conversion in respect of dealings with money once it has passed into currency. Accordingly, if cash is stolen by one person from another, but pays it to a third person, the third person cannot be sued in conversion, see *Lipkin Gorman v Karpnale Ltd*, (1991) 2 AC 548. The thief of the cash, however, is liable to an action for conversion, as an individual who found a lost bank note would be.

16 Remedies

What remedies are available in a civil recovery action?

The court may grant the following remedies in civil recovery actions.

Compensatory damages

- Damages;
- injunctions;
- an order for restitution of property where the court finds that party has been unjustly enriched;

- an order requiring a party to provide an account of profits improperly made form a breach of trust or fiduciary duty;
- a declaration as to the parties' rights relating to the matter in issue; and
- an order allowing the claimant to follow, trace and recover from the trustees or a third party property that has been applied or transferred in breach of trust.

Additional damages

- Aggravated damages, usually if the defendant is shown to have acted deliberately or out of malice towards the claimant; and
- exemplary or punitive damages in three sets of circumstances:
 - cases of oppressive, arbitrary or unconstitutional conduct by government agents;
 - where the defendant's actions were calculated to make a profit; or
 - where permitted by statute.

17 Judgment without full trial

Can a victim obtain a judgment without the need for a full trial?

A victim can obtain a judgment without trial in the following instances.

In accordance with the Grand Court Rules, a claimant who has served a statement of claim can apply for summary judgment after the defendant has given notice of intention to defend. The application must be supported by an affidavit verifying the facts on which the claim is based. The defendant opposing the application must file an affidavit addressing the merits of the claim. Summary judgment is granted if the court is satisfied that there is no genuine defence with a realistic prospect of success.

In disposal on a point of law either party can apply for the case to be determined on a point of law or on the interpretation of a document without a trial.

The court may, upon the application of a party, determine any questions of law in circumstances where a party has:

- failed to file notice of intention to defend or a defence to a claim (default judgment);
- failed to comply with the court's rules for the disclosure or production of documents;
- breached or failed to comply with the rules or an order of the court; or
- engaged in conduct that amounts to an abuse of process or that makes a fair trial impossible.

18 Post-judgment relief

What post-judgment relief is available to successful claimants?

Compensatory damages available to successful claimants include:

- an order for the restitution of property where the court finds that a party has been unjustly enriched;
- an order requiring a party to provide an account of profits where a profit has been improperly made in the course of or as a result of a breach of fiduciary duty;
- a declaration as to the parties' rights relating to the matter at issue;
- an order allowing the claimant to follow, trace and recover from the trustees or a third-party property that has been applied or transferred in breach of trust; and
- freezing orders.

19 Enforcement

What methods of enforcement are available?

Methods of enforcement include:

- the seizure of assets;
- a garnishee order (an order requiring a third party who owes money to the judgment debtor to pay it to the judgment creditor);
- charging orders over land or other assets; and
- insolvency proceedings.

20 Funding and costs

What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

The Cayman Islands does not have statutory provisions in place which govern the funding of litigation. In *National Trust for the Cayman Islands v Humphreys (Cayman) Ltd* (2003 CILR 201), Zacca J highlighted the

unsatisfactory state of the law in the Cayman Islands in regard to conditional fee arrangements urging the Attorney General to properly address the matter. The court also urged that there ought to be fresh consideration given as to whether the doctrines of champerty and maintenance served any useful social purpose in the Cayman Islands. The Court of Appeal in *Attorney General v Barrett* (2012 (1) CILR 127) examined the issue of conditional fee agreements as between attorney and client and confirmed that uplifts in fees in accordance with conditional fee arrangements would not be allowed. The issue is currently being reviewed by the Law Reform Commission.

The overriding objective contained in the Grand Court Rules is to enable the court to deal with every cause or matter in a just, expeditious and economical way. The court has a duty to actively manage proceedings by considering whether the likely benefits of taking a particular step justifies the cost of taking it. For instance, when the court exercises one of its case management powers (such as setting or amending trial dates) it must do so in furtherance of the overriding objective. There are, however, no explicit powers to make costs management orders nor has there been a comprehensive review of costs as in England and Wales under the Civil Procedure Rules.

Criminal asset recovery

21 Interim measures

Describe the legal framework in relation to interim measures in your jurisdiction.

The various laws of the Cayman Islands related to these types of investigative or enforcement actions empower the court to issue orders to the police or a similar enforcement agency to restrain or seize property if sufficient evidence has been presented prior to the final disposition of the trial.

This will prevent any specified person from dealing with any realisable property held by him or her, subject to such conditions and exceptions as may be specified.

22 Proceeds of serious crime

Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

An investigation is instigated once the victim of the crime reports the incident officially to the enforcement authorities. The police will investigate the crime and if sufficient evidence is discovered, then a defendant will be charged by the Attorney General's Chambers.

Additionally, CIMA has the regulatory power to investigate serious breaches of regulatory laws for entities registered as financial service providers in their jurisdiction. It can initiate investigative procedures (eg, information or document collection, employee testimony) and determine whether to bring enforcement action against an entity or an individual in contravention of the regulatory regime. These enforcement actions are then authorised by the authority's board of directors.

23 Confiscation - legal framework

Describe the legal framework in relation to confiscation of the proceeds and instrumentalities of crime.

Under the Proceeds of Crime Law 2008, the court can make a confiscation order on a defendant in addition to any other sentence passed upon him. The court can do this on a number of bases including if it decides that the defendant has benefited from his or her particular criminal conduct. If it decides this it can make an order requiring him or her to pay the court the amount deemed to be his or her benefit.

24 Confiscation procedure

Describe how confiscation works in practice.

Once the court has decided against the defendant during the trial, it can issue a penal confiscation order as punishment for the defendant's actions.

Enforcement agencies, such as the police or customs officers, can then seize property belonging to the defendant. Orders can also be applied to third-party holders of the property (ie, banks or funds) provided that the defendant's property can be sufficiently identified and is not mixed with that of third parties.

25 Agencies

What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The following agencies are responsible for tracing and confiscating the proceeds of crime:

- CIMA, which can initiate its own actions (as mentioned above) that might include aspects of tracing the assets;
- the Attorney General's Chambers, which will often identify the assets as well;
- the police and customs officers, which are the main agencies used for confiscation; and
- the Financial Reporting Authority.

26 Secondary proceeds

Is confiscation of secondary proceeds possible?

Under section 76 of the Proceeds of Crime Law 2008, realisable property includes money and all forms of real or personal property, things in action and other tangible or incorporeal property. There is no absolute distinction under the Law between primary proceeds and secondary proceeds. Rather, confiscation is simply possible across all listed asset classes.

27 Third-party ownership

Is it possible to confiscate property acquired by a third party or close relatives?

Third parties are at risk of the confiscation of those assets within the classes mentioned above where the same constitutes a tainted gift within the meaning of sections 70 and 71 of the Proceeds of Crime Law 2008. Property that represents a tainted gift is as 'realisable' against a third party as it would be against the individual that gifted it to them.

28 Expenses

Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

Subject to Part III.22.1 of the Proceeds of Crime Law 2008, a defendant can be given a court order involving payment directly to the government of the Cayman Islands (compensation orders).

29 Value-based confiscation

Is value-based confiscation allowed? If yes, how is the value assessment made?

Under Part III.18(1) of the Proceeds of Crime Law 2008:

For the purposes of deciding the recoverable amount, the available amount is the aggregate of the total of all the values (at the time the confiscation order is made) of all the free property then held by the defendant minus the total amount payable in pursuance of obligations which then have priority; and the total of the values (at the time) of all tainted gifts.

With this definition, any property held by the individual would be put towards payment under the confiscation order.

30 Burden of proof

On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

Pursuant to section 15 of the Proceeds of Crime Law 2008, the court will, in addition to dealing with an offender in any other way, make a confiscation order requiring the offender to pay such sum as the court finds fit.

The preconditions are that:

- the defendant is convicted of an offence or offences;
- the Attorney General asks the court to proceed under section 15; or
- the court believes it is appropriate to do so.

The court, assuming that the above conditions are met, must decide:

- whether or not the defendant has a criminal lifestyle;
- if so, whether or not he or she has benefited from his or her general criminal conduct; and

- if he or she does not have a criminal lifestyle, whether or not he or she has benefited from his or her particular criminal conduct.

If benefit is found, the court shall then decide, on the balance of probabilities, the recoverable amount and will make a confiscation order requiring payment of that amount and may take into account whether or not there are pending civil proceedings brought by the defendant's victims arising out of his or her offences.

Where a criminal lifestyle is found, the court shall take account of conduct up to the time when that finding is made and of property obtained up to that time when calculating benefit. Four assumptions are made against the defendant in this regard (unless they are shown to be incorrect or making them would result in serious injustice):

- all property transferred to the defendant after the 'relevant day' (the first day of the period of six years ending with the day on which proceedings for the offence concerned were started against the defendant or, if two or more offences, the earliest of those dates) was obtained as a result of his or her general criminal conduct;
- any property transferred to the defendant after the date of conviction was obtained by him or her as a result of his or her general criminal conduct;
- any expenditure after the 'relevant day' was met out of property obtained by him or her as a result of his or her general criminal conduct; and
- for the purposes of valuing property obtained, it is assumed that he or she took it free from any other interests in it.

The defendant may displace the above assumptions in seeking to reduce the benefit figure, which is to be determined on the balance of probabilities.

Accordingly, once the Crown establishes the offence and the court rules that he or she either has a criminal lifestyle or has benefited from a particular crime, it is up to the defendant to displace the assumptions made above in relation to the property he or she acquired or disposed of in the six years before proceedings were begun against him or her. In reality, the burden of proving that certain property does not represent the benefit of a criminal lifestyle or a particular crime rests on the defendant.

31 Using confiscated property to settle claims

May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

The court is able to make an order of compensation after a conviction should a financial victim or victims be identified during the course of the trial.

The criminal conviction itself can also be used to recover money in a civil proceeding against the defendant.

32 Confiscation of profits

Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Yes, it is possible and there are numerous cases where the court has ordered disgorgement of ill-gotten gains. Additionally, any profit derived from assets or property involved in the criminal conduct after the conduct has occurred can be restrained and later confiscated.

33 Non-conviction based forfeiture

Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

In certain circumstances, such as the *Montesinos-Torres* case, Cayman authorities can deem a situation serious enough to justify in rem confiscation. For instance, concern that the local laws were also being violated in conjunction with a fugitive status of the defendant, lead the court to issue a confiscation order prior to an actual conviction being handed down.

Update and trends

As is well known, the US Foreign Account Tax Compliance Act (FATCA) has been reshaping the global regulatory landscape for non-US financial institutions and fiduciary structures. Cayman has entered into a bilateral 'Model 1' Inter-Governmental Agreement with the United States to govern the applicable FATCA obligations. The Tax Information Authority Law (2013) deals with the implementation of these agreements in the Cayman Islands.

Although FATCA is primarily concerned with account disclosures between foreign financial institutions and the US government, it has several important implications for civil asset recovery. First, FATCA has caused many countries to amend their bank secrecy laws, and thus FATCA may indirectly facilitate information-sharing even outside the context of US tax evasion. Second, FATCA is shining a spotlight on non-US fiduciary structures and causing the industry to reevaluate its non-US structuring. Third, as the US government requires global financial institutions to divulge account information in connection with criminal prosecutions or civil subpoenas, that information may become available to private litigants as well.

34 Management of assets

After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

Under the Proceeds of Crime Law 2008, the Attorney General may order a management receivership in respect of any realisable property to which a restraint order applies, or an enforcement receivership.

The court can empower the official or management receiver to 'realise so much of the property as is necessary to meet the receiver's remuneration and expenses'.

The proceeds, once certain expenses have been paid, shall be paid to the Accountant General for the Revenue of the Cayman Islands where civil recovery is concerned. Where there are excess funds arising from realisation under a confiscation order, the Accountant General is to treat the remainder as if it were a fine imposed by the court.

35 Making requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

As a signatory to various international treaties regarding asset tracing in criminal matters (see below) and bilateral mutual legal assistance treaties (eg, with the United States), the Cayman Islands can implement many of the legal tools generally available to countries. This would include letters rogatory for requests for evidence procurement, freezing orders, registrations of foreign judgments, etc.

The legal framework is dependent on the international and bilateral treaties, in which the procedures can vary substantially. It is almost a case-by-case basis to determine the legal procedures for requesting and receiving foreign legal assistance.

36 Complying with requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

Legal framework

The Criminal Justice (International Cooperation) Law allows for mutual legal assistance in the context of all serious offences under Cayman Islands law if requested by a country listed in the annex to the CJICL (identical to signatories of the Vienna Convention).

The Proceeds of Crime Law 2008 and the Misuse of Drugs Law govern the registration or enforcement of external confiscation orders. Requests for the enforcement of such orders may be requested only by countries listed in the annex (Vienna Convention).

The Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order enables the Grand Court to provide assistance to foreign courts in obtaining evidence in the criminal and civil cases in which charges have

been brought against the defendant. Requests are to be made through letters rogatory. The measure may be requested by any country.

Procedure

The central authority for all requests made pursuant to the CJICL, the MDL and the PCCL is the Attorney General; counsel in the Attorney General's Chambers will be instructed to execute the request.

The central authority for all requests made through letters rogatory based on the EO is the Grand Court. All letters rogatory are handled by the Attorney General, who instructs counsel in his chambers to apply to the Grand Court for granting of the requests. If the Grand Court grants the request, the evidence will be transmitted to the requesting court by the clerk of the Grand Court.

The central authority to receive mutual legal assistance requests based on the bilateral treaty with the United States is the Chief Justice.

37 Treaties

To which international conventions with provisions on asset recovery is your state a signatory?

The Cayman Islands is a signatory to the following conventions:

- the Vienna Convention;
- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;

- the United Nations Treaty on Organized Crime;
- the United Nations Convention against Corruption; and
- the OECD Anti-Bribery Convention.

38 Private prosecutions

Can criminal asset recovery powers be used by private prosecutors?

The Attorney General is the only one entitled to bring criminal asset recovery proceedings. For practical purposes, however, the conduct of the proceedings is usually turned over to the Financial Crime Department of the Legal Department. Accordingly, while a private prosecutor would not be able to instigate the proceedings, he or she might ask for the Attorney General's permission to do so and to act in his or her name in those proceedings. The proceeds of any success, however, are likely to be dealt with in the usual way. There is no provision for a private prosecutor to realise any of the 'spoils' of any such private prosecution, though there are provisions for compensation where appropriate.

KOBRE & KIM LLP

THE GLOBAL LITIGATION BOUTIQUE

James Corbett QC
Pamella Mitchell

james.corbett@kobrekim.ky
pamella.mitchell@kobrekim.ky

45 Market Street, Suite 3207
Camana Bay, Grand Cayman
Cayman Islands KY1-9006

Tel: +1 345 749 4000
Fax: +1 345 749 4020
www.kobrekim.ky

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