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Navigating Asset Recovery in the Face of Criminal Enforcement

Agencies pursuing criminal enforcement often move quickly to seize assets, complicating civil asset recovery for creditors by creating uncertainty around control, timing, and recoveries. These challenges are amplified in cross-border matters, where overlapping regimes and parallel proceedings can fragment recovery efforts and increase risk. Effective strategies require early jurisdiction assessment, careful analysis to preserve assets outside forfeiture scope, and coordination with authorities.

Civil asset recovery, often pursued by creditors, insolvency fiduciaries, litigation funders, or asset recovery specialists, becomes more complex when criminal authorities pursue the same assets. Enforcement agencies may act quickly, exercise powers outside insolvency-related restraints, and prioritize objectives that differ from those of creditors, creating uncertainty regarding control, timing, and ultimate recovery. At the same time, strategic cooperation between private recovery stakeholders and law enforcement can expand the pool of recoverable assets and create mutually beneficial paths to value.

These challenges are often compounded in cross-border matters, where assets are dispersed across jurisdictions and subject to overlapping legal regimes. Insolvency and enforcement frameworks do not always align, and proceedings may advance on parallel tracks with limited coordination or transparency. As a result, parties seeking recoveries can face fragmented processes, competing claims to title, and heightened risks when attempting to preserve, monetize, or deploy estate assets, particularly when those assets are needed to fund their own recovery efforts.

Against this backdrop, asset recovery in the face of criminal enforcement requires more than traditional insolvency or civil litigation tools. Understanding how and when to coordinate, when to assert independent recovery rights, and how to navigate overlapping proceedings can materially affect outcomes and determine whether value is preserved or

- **Assess Timing, Jurisdiction, and Control at the Outset.** When criminal proceedings are pending or anticipated, the sequencing of actions matters. Government enforcement powers, particularly in the U.S., operate independently of bankruptcy stays and may affect whether assets ever enter a bankruptcy estate. Early analysis of when alleged conduct occurred, when proceedings commenced, and which court has jurisdiction over specific assets is critical to determining recovery options and avoiding adverse outcomes driven by timing alone.
- **Identify Which Assets Can Lawfully Be Ring-Fenced.** Most law enforcement authorities, especially the U.S. Department of Justice (DOJ), will pursue the broadest possible set of assets through aggressive legal theories. This makes it important for stakeholders to proactively develop factual support to argue that certain assets fall outside the permissible forfeiture scope. Careful factual and legal analysis can help distinguish truly forfeitable assets from those that can be ring-fenced as untainted or otherwise protected, preserving value for creditors, guiding negotiations with authorities, and potentially creating a war chest to fund civil asset recovery efforts. This approach can benefit both civil creditors and law enforcement, as civil fiduciaries or trustees may be better positioned to pursue certain assets or claims that ultimately enhance total recoveries.
- **Coordinate Strategically with Criminal Authorities.** Early engagement between insolvency fiduciaries, creditors, or asset recovery specialists and enforcement authorities can reduce conflict, avoid duplication, and enable more efficient cross-border recovery. Coordination agreements may clarify roles and allow insolvency fiduciaries to pursue assets where authorities lack reach or resources. However, whether to engage early must be evaluated on a case-by-case basis.

When criminal authorities are involved, asset recovery is rarely linear. Competing legal regimes, enforcement priorities, and procedural constraints can reshape recovery pathways and outcomes. Parties that move early to assess exposure, clarify asset risk, coordinate with authorities, and deploy cross-border strategies are better positioned to protect value and navigate enforcement-driven recoveries effectively.

About Kobre & Kim

Kobre & Kim is a global law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

- Our team of offshore-based lawyers and former government prosecutors has deep experience tracing, freezing, and recovering misappropriated assets hidden in cross-border and offshore structures.
- Our deep experience coordinating claim enforcement and monetization strategies across jurisdictions, often involving assets and adversaries across key offshore financial centers.
- Our onshore and offshore lawyers – including an integrated group of U.S. litigators, offshore lawyers qualified in key jurisdictions, Hong Kong solicitors, and English barristers and solicitors – help clients identify vulnerable assets and mitigate reputational harm caused by investigations.