



Insights

Wealth Talk: Farrington Yates on Using U.S. Insolvency for Cross-Border Information Gathering

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It may be surprising to learn that there can be a broad overlap between U.S. bankruptcy law and litigation involving high-net-worth individuals (HNWIs), but as Kobre & Kim's Farrington Yates explained in the tenth episode of Kobre & Kim's series with *Family Wealth Report* on global challenges facing HNWIs, the available tools can be powerful.

There are three types of U.S. bankruptcy proceedings: Chapter 7 for liquidation, Chapter 11 for restructuring and Chapter 15 for foreign recognition. As Mr. Yates, who focuses on complex cross-border insolvencies, indicated, broad discovery tools are available in all three. These include the examination under oath of a debtor for information related to claims, finances or transfers. Disputes over the case itself can open up the full range of U.S. discovery tools, and courts can punish people for not complying even if they are outside the U.S., as long as they have assets in the U.S.

Typically, debtors with assets in the U.S. will likely seek Chapter 15 recognition to gain protection of those assets, but this opens them up to the aforementioned discovery procedures that creditors can leverage. Creditors can even try to put debtors in an involuntary insolvency process to achieve this result. However, debtors who have an entity separate from their main company may be able to use it to go on the offensive by putting it in a voluntary insolvency and gaining discovery tools, using the U.S. Bankruptcy Code to their advantage as well.

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