2022 AGENDA

FORUM ON

International Enforcement of Judgements & Awards

JUNE 12 - 14, 2022

Pennyhill Park
Surrey, United Kingdom

DAY 1 SUNDAY, JUNE 12, 2022

3:00 p.m. Check-In

7:00 p.m. Welcome Reception & Dinner
The Library

DAY 2 MONDAY, JUNE 13, 2022

7:30 a.m. Breakfast
Hillfield Restaurant

8:30 a.m. Welcome Remarks & Introductions
Balmoral

Session 1

9:00 a.m.

Opposing Enforcement Based on Alleged Fraud or Crime

Discussion Leaders

Stéphane Bonifassi
Bonifassi Avocats
Paris, France

Nour Hineidi
DIFC Courts
Dubai, United Arab Emirates

This session will specifically focus on the defensive side of enforcement and will be broken into the following components:

- Setting aside or preventing the enforcement of an arbitral award on public policy grounds; and
- Preventing the recognition/enforcement of a foreign judgement; and
- Setting aside an order or a judgement in the jurisdiction where it was rendered.

When it comes to arbitral awards, there is certainly a trend whereby defendants challenge awards, at the enforcement stage, on public policy grounds (in particular, claiming corruption and/or money laundering). This has sometimes proven successful.

Setting aside a judgement on the merits, one which is fraudulently obtained is arguably more challenging, but it is worth assessing how effective a defendant can be in raising fraud allegations.

Generally speaking, and in most jurisdictions, with litigation – legal representatives are held accountable to the Court due to professional conduct regulations. Where certain orders are obtained from the Court, whether *ex parte* or on notice, there is a requirement that full and frank disclosure be made. How successful can a defendant be in challenging this in the jurisdiction where the order was obtained. It is (or is it?) a practitioner's duty, after all, to ensure that the requisite enquiries and due diligences are carried out before seeking Court relief on a subject matter. Does this in turn, make it more challenging to set aside a judgement on fraudulent grounds, on the basis that the evidentiary burden is difficult to overcome?

The following issues will be considered:

- Have defendants had success in challenging arbitral awards at the enforcement stage on public policy grounds, such as corruption, money laundering or fraud? How receptive are your national courts to such arguments?
- In your jurisdiction, is it easy to successfully raise fraud allegations to obtain the setting aside of a domestic decision? Is there a specific procedural route to take? Is the "full and frank disclosure" test one that can be raised with some chances of success, particularly when it comes to *ex parte* applications?
- How successful can one be at challenging the recognition / enforcement of a foreign judgement on fraud allegations, particularly when the decision was rendered in a jurisdiction where fraud is rampant and where the professional standards may not be as strong as in other jurisdictions?

10:20 a.m. Refreshments

Session 2

10:40 a.m.

Receivership -v- Involuntary Bankruptcy: *Chartering the Best Course to Recovery*

Whether a claimant may or should look to enforce a judgement or award internationally through a receivership rather than an involuntary bankruptcy process can be a difficult decision. Both weapons are considered nuclear in a claimant's arsenal of weapons to seize and monetize assets to satisfy a judgement or award, but each brings with it its own pitfalls and difficulties. Neither process provides a simple and easy solution for monetizing a judgement or arbitral award.

This session will look at the advantages and disadvantages of deploying receivership over an involuntary bankruptcy (such as liquidation) from both a civil and common law perspective. We will focus on practical considerations when choosing one process over the other, whether there are other proceedings, especially in civil law jurisdictions, which may be more desirable and achieve a similar outcome, and how factual circumstances, effective control of the assets that are subject to the appointment and their geographical location all play key roles in deciding the best route to take. This will involve considering:

- The jurisdictions in which a receiver can be appointed, which are evolving. We will look at the thresholds that must be met for the appointment of a receiver versus commencement of an involuntary bankruptcy process and whether there are other procedures, especially in civil law jurisdictions, that might achieve a better outcome.
- The effect of the appointment and the duties and obligations of a receiver and those of an officeholder in an involuntary bankruptcy process, including limitations imposed on what the receiver can and can't do by the appointment order and the often-wider statutory powers available to a liquidator or trustee.
- How the asset profile of the debtor drives the suitability of each process and whether another route might be more desirable. In particular:
  - The need for recognition in other jurisdictions and the relief an officeholder may obtain.
  - Ability to obtain the information necessary to trace, secure and monetize assets as well as locating, securing, and monetizing other assets which may be legally and/or beneficially owned by the debtor.
  - The efficiency and cost effectiveness of involuntary bankruptcy proceedings versus receivership and whether there is another more desirable route that can achieve the same result.
  - The interplay of receivership and involuntary bankruptcy proceedings, including mixing and matching the processes across jurisdictions, the tensions between them and lessons learned and the effect of an involuntary bankruptcy proceeding on receivership and vice versa.

Discussion Leaders

Cosimo Borrelli
Kroll
Hong Kong

Rebecca Hume
Gateley
London, United Kingdom

Kelly Naphtali
Kirkland & Ellis LLP
Hong Kong

12:00 p.m. **Luncheon**
Hillfield Restaurant

Session 3

1:30 p.m.

Tracing and Recovering Cryptocurrency

As cryptocurrencies become increasingly widely held, it is important to understand how crypto assets can be found, traced and recovered in the enforcement of judgements and awards. In addition, given that cryptocurrencies can easily be moved around (even more so than fiat currencies), techniques to freeze crypto assets should be considered. This is also critical in the event of crypto theft or fraud.

This session will feature a demonstration of cryptocurrency tracing by Chainalysis, showing the most up-to-date technology for tracing the movement of cryptocurrencies across the blockchain. Illustrations will be given of how the tracing information can be used as evidence in court to freeze and recover crypto assets.

This will be followed by a group discussion of how crypto assets can be identified in the first place and how, in different jurisdictions around the world, it may be possible to enforce judgements and awards against such assets.

Discussion Leaders

Matthias Gstoehl
LALIVE
Zurich, Switzerland

Danielle Haston
Chainalysis Inc.
London, United Kingdom

Scott Johnston
Chainalysis Inc.
London, United Kingdom

Jef Klazen
Kobre & Kim LLP
New York, United States

2:50 p.m. **Refreshments**

Session 4

3:10 p.m.

Investigations and Problem-Solving in the Real World: *Tactics and Pitfalls*

A good investigator can make – or break – a case. At the same time, in many cases, a client has already suffered large losses and is not keen (or just do not have the money) to spend large amounts on asset recovery and judgement enforcement. In other cases where external funding has been secured, there may be limited budgets for investigations and recovery. In such situations, it is important to target investigations and investigative tools for the highest-impact areas—but how to determine what these are?
There is no one-size-fits-all investigation strategy for a case. The aim of this session is to consider what has worked in the past, as well as highlighting non-traditional investigative and discovery tactics.

Specific topics include:

Sequencing and strategy

- How to get the best value in investigations?
- When to bring in investigators and how their mandate may change during different phases of the investigation (pre-litigation, during a case, or after an award)?
- What types of questions are better, or worse, to ask investigators to assess?
- How to get the most out of an investigator's "scoping phase"?

Asset searching for recovery and negotiations

- What types of assets can bring the most value—not just monetarily but to improve a negotiating position?
- What types of assets are relatively easier and more difficult to recover?

Other international disclosure tools

- What are some investigative techniques that can be used to get materials from more difficult jurisdictions? For example, 1782, receiverships / insolvency techniques, court expert appointment, etc.
- How can these be used to achieve results where roads seem blocked (i.e. enforcement in difficult jurisdictions through corporate law)?

Discussion Leaders

Rodrigo Kaysserlian
Krikor Kaysserlian
Advogados Associados
São Paulo, Brazil

Matthew Taylor
K2 Integrity
London, United Kingdom

4:30 p.m. End of Day 2

7:00 p.m. Reception & Dinner
The Library

DAY 3 **TUESDAY, JUNE 14, 2022**

7:30 a.m. Breakfast
Hillfield Restaurant

Session 5
9:00 a.m.

Sanctions, Trade Blocks and Technology: *The Current State of Play, Sanctions Risk Management and a Look to the Future*

Balmoral

Given the immediate and cumulative imposition of sanctions by the US, EU and key allies in reaction to the Russian invasion of Ukraine and the Russian and its allies countersanctions, clients and practitioners are struggling to keep on top of the situation, with each new round introducing further levels of complexity.

Given the potential for criminal liability arising for persons who breach or who assist others in circumventing sanctions, it is vital to get it right, however overshooting the mark carries its own risks. Persons in 3rd nations may find they are potentially in breach of sanctions imposed by both sides. Sanctions risk management is key.

Technological advances, having driven globalisation, have increased the focus of sanctions regimes in an effort to prevent their circumvention, including a particular focus on crypto currencies and their role in facilitating the circumvention of sanctions is a focus of the US and EU. How will sanctions continue to bite in the crypto universe?

In the current environment, it could be argued that we are moving to a "trade block" global environment and that globalisation is, sanction by sanction, becoming a thing of the past. However, we have been here before to some extent with previous sanctions regimes. What lessons are there to be learned from the fall out of those regimes?

This session will explore some of the key issues arising, including:

- The current state of play: Discussion regarding the key issues arising from the applicable sanctions regimes and how they are impacting transactions, industry and litigation and enforcement.
- Risk Management: What are the key risks? How can they be managed appropriately? What would you include in a risk management policy?

Technology:

- How can data and tech sovereignty be maintained in the context of the current sanctions environment?
- The supply of software and cloud services to sanctioned nations or entities can potentially contravene particular sanctions regimes, as can the extraction and exportation of data, sometimes with severe consequences. What are the foreseeable trends in this area?
- The use of crypto currency as a means of circumventing sanctions or avoiding judgement has been identified as a key risk by the US Treasury to the US sanctions

Discussion Leaders

Audrey Byrne
McCann FitzGerald
Dublin, Ireland

Karl Hennessee
Airbus
Toulouse, France

regime. What regulation do you see coming down the tracks in this area in your jurisdiction and what existing tools are available?

Strategic considerations and looking around corners:

- The extra territorial effect of US sanctions has long been a source of contention, particularly at EU level. Has this changed as EU sanctions have dramatically increased and are poised to go further? Do Russian countermeasures and third nation responses such as the Chinese Blocking statute and the expectation of further tit-for-tat measures signal an end to the assumption of end-to-end enforcement options? What additional steps become necessary in planning and executing an enforcement strategy today?
- Are we moving to a world where sanctions will continue to escalate and trade blocks are the default position for use by sovereign states who wish to wield influence in a particular situation? If so, what are the consequences for the global economy and how can we navigate doing business in such an environment? What about the implications for enforcement? What specific risks do actors from neutral nations face?

If we take an optimistic global view, what planning can we/should we do for untangling the situation that may be left behind in the event of a diplomatic solution that may be found, but which will certainly not address the myriad of claims and counterclaims that will sprout in its wake?

10:20 a.m. Refreshments & Check-out

Session 6

10:50 a.m.

The Fourth Estate as a Weapon for Lawyers

In this session, we are going to talk about PR campaigns during a litigation process. Our discussion will be divided into several conceptual layers. We will first focus on basic approaches to running a litigation PR campaign and difficulties that can be faced during the campaign in different jurisdictions. We will then overview more particular issues including using defamatory claims against adverse party and/or the lawyers and using social media for assets seeking. We will also talk about lawyers' right to be a spokesperson for their client. At the end of our session, we are going to discuss general PR for the law firms including recent lawfluencers" trend.

Specific topics include:

- Why and how to use a PR campaign in litigation? Are there any differences for claimants and defendants? What are the benefits and what are the risks (losing a case,contempt of court, for example)? Is it better to be proactive or reactive? When should it be used with caution? Are there any specificities in relation to enforcement work (more tailored communication to mentalities of place(s) of assets) (Bedzhamov case)?
- Use of defamation claims against adverse party and/or their lawyers (on the rise in Switzerland) as guerilla tactics to disrupt litigation.
- From a communication perspective, are lawyers the right spokespersons for their clients, even on technical aspects of litigation?
  - Lawyers' interaction with an independent press;
  - Lawyers' commentaries about proceedings on social networks.
- New trends in defamation cases:
  - Who is liable for defamation in social media?
    - 1) Providers; and/or
    - 2) Users – primary or secondary (e.g., liking an offensive social media post sufficient to be criminally liable for defamation in Switzerland).

Discussion Leaders

Thomas Eymond-Laritaz
HIGHGATE
London, United Kingdom

Benoît A. Mauron
LALIVE
Geneva, Switzerland

- Enforcement of foreign judgements on defamation issues.
- How to identify pressure points and create incentives outside of the court room for the other party to sit at the negotiation table and negotiate a settlement agreement?
- Communications that go far beyond PR – online, lobbying, think tanks and experts, back channels negotiations, public influencers, close door messaging, etc.

12:10 p.m. **Closing Luncheon**
Hillfield Restaurant

1:30 p.m. **End of Forum & Departure**